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AN EXAMINATION,

&c. &c.

PUBLICATIONS BY DR. NEWLAND.

1. AN APOLOGY FOR THE CHURCH IN IRELAND, addressed to the EARL OF MOUNTCASHEL 12mo. 5s.
2. MEMORIAL of the ESTABLISHED CHURCH IN IRELAND, addressed to the KING, LORDS, and COMMONS, of Great Britain.
3. OBSERVATIONS ON THE LONDON UNIVERSITY, addressed to the LORD BISHOP OF LONDON.
4. REMARKS on the PROPOSED UNION OF THE CHURCHES OF ENGLAND AND ROME, in answer to DOCTOR DOYLE.
5. AN ADDRESS to the PEOPLE OF IRELAND, on the REPEAL OF THE UNION.

AN
EXAMINATION
OF THE
EVIDENCE AND ARGUMENTS
ADDUCED
BY DOCTOR DOYLE
BEFORE THE COMMITTEE
ON TITHES IN IRELAND,
IN
DEFENCE OF THE SUPPOSED QUADRIpartite OR
TRIpartite DIVISION.

BY THE REV. HENRY NEWLAND, D. D.
VICAR OF BANNOW.

AUTHOR OF "AN APOLOGY FOR THE ESTABLISHED CHURCH IN IRELAND,"
&c. &c.

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TO

SIR ROBERT HARRY INGLIS, M. P.

FOR THE UNIVERSITY OF OXFORD.

MY DEAR SIR,

IN dedicating, to you, the following Essay, and thus feebly assuring you of the grateful sense I entertain of your kindness towards myself individually, I am anxious, at the same time, to acknowledge the obligations, under which, as a member of the Irish Branch of the United Church, I am placed towards you, for the devotion of your experience, talents, and learning to her interests. In this acknowledgment, I am persuaded that I do not stand alone,—I am satisfied that in making

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it, I but express the sentiments of the Established Clergy of this country.

It is a truth, a conviction of which has long since been impressed upon your mind, that the welfare of the Church, in England, is irrefragably bound up with the destiny, that awaits the Church in Ireland. One fate is suspended over both. The same shock that may overthrow us, shall overwhelm them with a similar destruction,—and the cry of *delenda est Ecclesia*, now raised by the infidel and the democrat, against the Irish Establishment, shall soon re-echo from the shores of Britain, with a triumphant violence, but little calculated upon by the friends of rashness, or the advocates of expediency.

This persecution, of which we are the immediate objects, is not confined to the withholding of our incomes. The sneer of the infidel—the machinations of the profligate, and the falsehoods of the defamer, are, as in days of old, poured

forth upon us. On the one side we are assailed by the vigilant hostility of an enemy, whose cunning is only equalled by his falsehood—whose career was begun with oaths, and protestations of peace and good will, which, when his own objects required it, were all forfeited and forgotten—who then devised a secret conspiracy to overturn what he had sworn to exert his influence in defending—and, who, when he had seen the successful developement of his occult machinations, avowedly braves the laws of England, and glories in his resistance—and this, in the presence of men, whose noble ancestors had, even in the times of Popish superstition, crushed the ambition, and restrained the wanton exercise, of prelatical insolence. On the other hand, we have to struggle against the more mean, though not less violent and interested zeal of itinerant agitators, who struggle to conceal, under the garb of patriotism, their own selfish projects—trusting

that they will yet reap a golden harvest from their hollow professions, by adding to the peoples burdens in the name of rent, what they seek to abstract from the clergy in the name of tithe. Thus did their predecessors of the last century, with respect to the agistment tithe. The interests of the multitude they professed to aim at—experience proved that self-aggrandisement was their object. They succeeded in their efforts, and the poor of the country were more oppressed than ever, by the very persons who pretended to befriend them.

Amid these various devices of our subtle enemies, we are still, however, unrepining and undaunted. Truth is with us, and the God of truth is on our side—against his Church and his people, even the gates of Hell shall not prevail—we stand upon a rock, from which no arm of flesh, no storm of persecution, no waves of popular fury, can ever move us. The clouds,

it is true, may lower over our heads—the piercing winds of Heaven may be poured forth upon us—but we trust, it is but to feel more surely the fixedness of our everlasting basis—and cement us, more closely, to the foundation upon which we rest. And though we are unable, in contemplating the future providences of the Lord, to reckon, with certainty, upon the course his wisdom and his love may lead him to pursue—still we cannot but derive comfort from the thought, that when a Church is struggling for improvement—when her clergy are progressing in devotedness to their high and heavenly calling, and her people panting for spiritual knowledge—such is not the period the Deity ordinarily chuses for her destruction—it is not the period when, according to the voice of history, the candlestick is removed from its place, and her name blotted out from under Heaven. If Jehovah, therefore, sends affliction upon us, it is, we trust, not

with the scourge of desolation, but the rod of chastisement—it is the fruit, not of anger, but of love—the harbinger of joy—the forerunner of victory. To him, therefore, we look—our trust—our hope is in him—and we want not, nor desire, another guardian.

I have the honor to be,

Sir,

Your faithful and obliged Servant,

HENRY NEWLAND.

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CHAPTER I.

General Observations on the supposed Quadripartite or Tripartite Division of Tithe.

“AT what time the parochial and common right to tithe became first settled with us in practice, is not so clearly known. And, though the Decretals suppose it a thing of custom here in Henry the Second’s time, yet if credit be given to the report of these English monks, which referred the ordaining of parochial right in tithes to the General Council of Lyons, held under Gregory the Tenth, then we might conclude the right of it, no ancients than about the beginning of our first Edwards.* But, whatever they meant, it is certain that some, both synodal and secular laws of this kingdom, had, before that time, ordained this right. Yet, indeed, it

* A. D. 1272.

will be found, that the practice of it here (as also in other countries) was not settled till some 1200 years after Christ.*

The Decretal epistle of Pope Innocent III. condemned the practice of appropriating tithe except in the parish in which it was gathered.† And immediately afterwards the parochial payment became so fixed, that in the reign of Henry III., in the records of suits in the ecclesiastical courts no other title is advanced for tithe, but that the land lay within the limits of the incumbent's parish.‡

Having thus ascertained from the highest authority that can be adduced on the law and history of tithes, the period when the parochial right to them was in general practice, we shall proceed to examine to what persons and to what uses, they were appropriated.

The position which I venture to maintain, in opposition to Dr. Doyle and every other advocate of a fourfold division of church revenues, is this, that from the year, when the parochial

* Selden's History of Tithes, c. 10. § 2. p. 288, 289. Edition 1618.

† See note A.

‡ See note B.

right to tithe was established and in practice, no statute law, no canon law, no common law usage, no, not even in one instance, can be produced, which sanction the opinion, that one-fourth of the tithes was ever appropriated to the sustentation of the poor, and another fourth to the repair of the fabric of the church. From the commencement of the thirteenth century to the period of the Reformation, not even the shadow of evidence, remains in history, in the laws of the land, or, in the parts of the civil or canon law, which have been, at any time, adopted in England and Ireland, or, in the rules, which common law has consecrated as the most binding decrees of jurisprudence, that such a quadripartite division of tithe, was ever known, or once practised, in England or Ireland, since the parochial right to it, was instituted.

I do not mean to admit, that even before the thirteenth century, such a division had place in this kingdom, except during the time, when the bishop and his clergy lived in common,* and were maintained by the voluntary offerings of

* See note C.

the faithful, and not by the proceeds derived from land or tithe, as property. And even this admission, it is not necessary to make, for the letter of Pope Gregory to Augustine evidently establishes, that whatever might have been the practice of the Western church, in the rest of Europe, permission was granted to the Church in England to abide by regulations made previously to the receipt of the Pope's epistle.*

In all the legatine commissions, sent into England by the Roman pontiffs, in all the provincial councils and synods, held under the sanction of British monarchs, archbishops and bishops, with the professed object of regulating all the affairs of the Church in England and Ireland, no mention is made of the fourfold division of tithe. These legatine commissions, councils and synods, at large, and with special amplification, ordain and modify the laws of England respecting tithe; but in no case, can even the eyes of the wakeful and virulent enemy of the Established Church, nor the wildest spoliating political economist, discern sufficient

* See note D.

ground to justify the rancour of the one, or to enable the other to pitch his hypothesis upon any sure foundation, that the clergy are now bound to appropriate, or that the Roman Catholic clergy, from the time that the parochial right to tithe was established, ever did appropriate, two portions of their revenues to the above named purposes.

Dr. Doyle has stated, in his pamphlet to Mr. S. Rice, "such information (relating to the nature and destination of church property) could scarcely be expected from a clergyman of the Established Church, especially from one whose studies were not occupied with ecclesiastical antiquities or laws. *I am differently circumstanced; I am connected with these old canons; they have been long familiar to me.*"*

Dr. Doyle's long familiarity with these old canons has, doubtless, given to him great advantage over the clergy of the Established Church in the present controversy, as to the ancient partition of ecclesiastical revenues. But fortunately his enviable proficiency in this de-

* Letter on a Legal Provision for the Irish Poor, p. 82.

partment of literature cannot change one jot or tittle, in the sources from whence he has drawn his treasury of learning. I am, unhappily, a clergyman of the Established Church, from whom, by Dr. Doyle's modest decision, information on this subject, cannot be expected. Yet, though I assert no arrogant pretensions to exclusive illumination, I now challenge Dr. Doyle to establish, respecting these canons, for a propriety in which, he claims an hereditary title, a declaration, which he made before the committee of the Lords on the subject of tithe. The statement which he delivered, with characteristic modesty and all the accompaniments of Christian meekness, was this, "that the tripartite division is found to have prevailed, after parishes were formed throughout England and the rest of Europe." He was then reminded that the question referred to England, and he replied, "I find no difference in legislation."

The object of this essay is to maintain that no division of tithe was known in England, after the settlement of parishes, and that the whole tendency of legislation on the subject, was directed to the establishment of the sole and undivided right of the parochial minister to

the tithes of his parish. If I err, in any of my statements, let Dr. Doyle confute me. I am now at the mercy of one who is "connected with these old canons." I claim instruction at his hands as "he is differently circumstanced," with respect to the means and ability of acquiring knowledge, on this subject, from the clergy of the Established Church. While his long familiarity with these ecclesiastical depositories of learning, will enable him, at no costly expenditure of his valuable time, to enlighten one, who is now a sturdy dissentient from his opinions.

In the present controversy, it matters little, that a fourfold division of tithe can be traced in the obscure and adulterated canons of foreign churches, or in the forged decrees of British monarchs, in Saxon times.* Though such a division had place in other churches—though the records of these Saxon councils and canons were gennine and pure from interpolation and deceit, how can they apply to tithe, possessed under the sanction of the law, which decreed the parochial right?

* See note E.

No decisions of foreign courts, or churches, or synods, or even of popes and councils, can be considered as having reference to England, unless we can trace their naturalization in these countries, by their adoption into the statute law; or, by being made the foundation of practice, which eventually became the custom of the land. And even, in this case, it would be the English custom, not the foreign law, that would consecrate the usage, as binding here. The Justinian code and the whole body of the civil law were abjured in England. Whatever power they might possess in other lands—whatever injunctions they might impose on more slavish churches—that power was inefficient to secure obedience—these injunctions were dead letters, in England, until the nation sanctioned their application, and adopted their provisions.

It is, no doubt, true, that though the canon law had been abjured, the study of it still continued. The priests and monks, in their colleges and schools, in spite of a monarch's will, and in defiance of the nation's command, still, with zeal, enjoined attention to it. It formed a chief part of the learning of the times, as the adage, *nullus clericus nisi causidicus*, may

remind us. But this monastic and priestly disobedience of authority and the adherence to what was prohibited, did not, and never could, impart to this abrogated system of legislation, the power and vitality of British law.

Therefore, any authority which may be traced, in continental documents, as to the fourfold division of tithe, has no reference, as obligatory law, to these countries. Dr. Doyle however argues differently. He declares before the committee, "I have ascertained by books of the practice in England, and I find it uniform with the practice on the Continent." Again, when urged for an explicit answer, which, with wily wisdom he studiously avoided, he asserts, "In fact if you go through the legislation of the Catholic Church which embraces all the kingdoms of Europe at that time, you will find no discipline but this, and unless you produce a positive statute to show, that this general practice of Europe was altered in England, you must necessarily admit, that that practice is now only dormant, and not extinguished."

It might be enough to reply to this statement that the burden of proof, as to the adoption by

England, of the practice of foreign churches, lay with Dr. Doyle and the advocates of his opinions. For even the slightest acquaintance with English history, establishes that the interference of the Pontiff, and the Church of Rome, with the Church Establishment in England, was never permitted, even in popish times, unless such interference was countenanced by the monarch and the magnates of the kingdom. This countenance afforded to the laws and decrees of the Pope, protection which, extrinsic of it, they never could or did possess. Therefore we might demand, and remain satisfied, that no answer could be given, what king, what synod, what council, what law, statute, or civil, or canon, ever in England acknowledged or enacted, that since the institution of the parochial right, the division of Ecclesiastical revenues should be similarly arranged, as they were, by the other churches of Europe, even supposing, which I never can admit, because it was not the fact, that such a quadripartite division had been observed by them. Until our adversaries point out this sanction, as expressed by British canon law, or by statutable enactment, our defence would

be complete, inasmuch as the whole body of the civil code, which regulated the affairs of foreign churches, had been abjured in England.

But on such negative evidence we are not content to rest our defence. We claim as our Roman Catholic ancestors always claimed, even in the days of our first Edwards and Henries, the inviolable privilege; and we challenge this privilege as the birthright of the national Church, as well before, as since the reformation, of obeying the laws of England, whilst we utterly abjure, as they did, the arbitrary injunctions of tyrannical foreigners. And therefore we willingly and boldly consent, to accompany Dr. Doyle, in his investigation into the legislature of the Roman Catholic church; and we undertake, whilst we survey the large and unwieldy mass of the canons, which regulated Ecclesiastical affairs, from the thirteenth century, when the parochial right to tithe was established, to the reformation, to prove, that there were positive statutes and numberless canons of the church asserting in the most distinct and categorical terms, that the practice in England, for more than three centuries of Popish rule, was diametrically

opposed to what he declares, to have been the arrangement respecting tithes in the other churches of Europe. And therefore that the right of the poor to the fourth of the tithes, and of the people, generally, to a similar portion for the fabric of the church, is not now dormant, but that it never existed.

Before I pass to the documentary evidence taken from the same armoury from which Dr. Doyle has derived his exterminating artillery, the canons of the church, there are some arguments and authorities employed by other cavillers, to which I shall direct some attention.

Sir W. Blackstone has stated "that at the first establishment of parochial clergy, the tithes of the parish were distributed in a fourfold division, one for the use of the Bishop, another for maintaining the fabric of the church, a third for the poor, and a fourth to provide for the incumbent." Even an inattentive reader of Judge Blackstone's commentaries must have observed the deference, which he, on all occasions, pays to the authority and learning of Selden. This learned antiquarian is the Judge's guiding star, on many points, beside those on which he refers to him on the

subject of tithes. But on this point he has carelessly noted Selden's opinion that it is no more than probable, that such a division, was even in early times, observed in England. It might have had existence for a season while the Bishop and his Clergy lived in common. But when the necessities of the Church which had imposed this mode of living, had been withdrawn, so also ceased the division of arbitrary offerings, by which the Church had been maintained. This division, it is important to remember, had been arranged before the introduction of tithes, and had ceased before they were the acknowledged property of the Church. The quadripartite partition was disbursed from voluntary offerings, but never if Selden's opinion shall weigh with the disputants, after the clergy were located in different districts.

The authorities, which are adduced in defence of the fourfold division, Selden has unceremoniously charged as forgeries. By whom could these forgeries have been pawned on the world, as the authentic documents of previous times? Not by the parish minister, for the deceit would have tended to infringe upon his own interests.

Not by the people for they were too ignorant, and too much oppressed, either to know or to vindicate their rights. Who then but by the Heads of Religious houses, to whom the guardianship of the poor having been committed, an evident advantage lay in the adulteration of the Ecclesiastical records, as thus a larger proportion, than their avarice had already secured of the revenues of the church, might be placed at their disposal.

But though Blackstone's statement was accurately correct, which his own cherished authority abundantly has proved it is not; yet as the Clergy of the Established Church enjoy their property, under the sanction of the privileges granted at the reformation, they might fearlessly appeal to this protection. Further, if we could roll back the three centuries which have passed since the reformation; if this were the sixteenth and not the nineteenth century; if the Roman Catholic were the Established Religion of these kingdoms, the statement of Sir William Blackstone though, in every letter, correct and true, would not affect in one jot or tittle, the property of the Church. For the rights of the clergy, as now asserted, are not founded upon any law or

custom, contemporaneous with the institution of parishes. It has been negligently admitted, that the establishment of parishes and the introduction of the parochial right to tithe, emanated from the same law, and grew up together. But parishes and parochial ministers, had existence, before the parochial right to tithe was instituted. So that, the fourfold division might have been in practice, when parishes were first established, and yet have passed into desuetude, when a new and subsequent title was given to tithe. The Roman Catholic clergy, before the reformation, as the Protestant clergy do now, received their tithe, not in right of the creation of parishes, and their residence in them, but in right of a custom, long subsequently to the creation of parishes, instituted, namely, the parochial right to tithe.

If then a right to tithe, subsequent to that of endowment, and undiminished by any deduction, be that on which the property of the Protestant clergy, now rests—if the Roman Catholic clergy, for more than three hundred years before the Reformation, pleaded not the right of endowment, but the parochial right to

tithe—if this long consuetudo has grown into the most stabile law, by the observance of the people of this nation for more than six centuries—who is the lawyer, or where the speculatist, who will abrogate, first, the common law usage since the Reformation—then ascending to earlier times, in the hasty and promiscuous devastation of prescriptive rights, annihilates the customs, observed by the Roman church for three hundred years—then having destroyed all the rights derived from statute law and from custom, assails, at one fell swoop, the entire canon law of England, and, having laid waste and set at nought, the only ecclesiastical authority ever acknowledged in these kingdoms, bounds in an unholy zeal for the demolition of the Protestant church, to a period when the fourfold division is only conjectured to have had existence, and which the most profound and eminent authority that ever wrote on the laws and history of tithes has pledged his high character that all his investigations on the subject settled this conviction in his mind, that since the period of voluntary offerings had passed away, and the church was endowed with lands

and other property, no such division was ever practised, nor can any trace of its existence be found in the records of antiquity, save in the forgeries of debauched and avaricious monks.

But even allow to Judge Blackstone's authority the most precise accuracy. Remove the objection, which may be fairly drawn respecting the establishment of parishes being distinct from the period when the parochial right to tithe was introduced, and, therefore, that the practice in the former period has no binding efficacy, when a new law instituted a new right,—grant that it is even wise to recur to this vaunted usage—appoint commissioners to carry the law into effect, what must be the first object of enquiry? This, assuredly; are the tithes now received by the parochial incumbents, that portion of ecclesiastical property, from which the poor were ever supported? The lay impropiators ought to be the last witnesses, whose evidence the commissioners should be solicitous to procure.

The clergy of the united Church of England and Ireland, do not require the shield of subtle defence for the preservation of their present

rights. We may grant much more to our adversaries, than they can justly claim, and providing them, even with gratuitous weapons against ourselves, and, permitting them even to choose the field, where they will contend, we shall have the satisfaction of compelling them to acknowledge, we are victors in the fight. They rest on Blackstone's authority. Give to it, the amplest latitude and all the humble deference, which a legal authority, so justly eminent, deserves, and it amounts to no more than the opinion of an individual, as to the primary dedication of tithe. If the learned Selden's opinion be as good as his, we have one illustrious name marshalled against another name, great indeed, but not so illustrious on the general subject of tithes. If Selden's opinion carry greater weight, such a quadripartite division, was never made from the present property of the Church. And even to admit that such a distribution had been known after the Church had acquired estates in lands, touches not with even a faint assault, her present rights, for this would be to dig from an imaginary grave, some unknown and undiscovered usage—some mystified prac-

tice and erect them into law, in contravention of regulations, consecrated by the observance of, at least, six hundred years. For it is observable that Dr. Doyle does not assert, that the Roman Catholic Church, before the Reformation, complied with this supposed law. When asked, "Do you mean to say that the Roman Catholic clergy, up to the time of the Reformation, reserved no more than was necessary for their decent subsistence?" He answers, with considerable adroitness, "I say so, if they acted conformably to law." Dr. Doyle was pleased to forget that the practice of his Church, before the Reformation, is one of the main points in dispute. If his evidence of this practice extends no further, than that the law was broken, if it was not obeyed, he admits no more, and proves, or rather asserts, no more than this, that there existed a law upon the subject. His evidence fully established that, however boldly he could assert what had been the practice of the Roman Catholic Church, he could not prove, that the fourfold division had ever been observed. The noble lords, in the committee, aware of his ineffectual struggles to maintain his position,

pressed sorely upon him. They asked, "Does what you have just stated, amount to any proof, *in point of fact*, that that claim of the poor antecedent to the Reformation, was made and acknowledged." The way in which, he establishes the *point of fact* is, by a re-assertion of his own belief, and couched in these very candid and explanatory words, "I cannot have the smallest doubt upon my mind, that it was made and acknowledged, and at the obligation of the Catholic clergy was fulfilled, because I find no proof to the contrary, and, finding it still in practice where they have their possessions, how can I doubt, that they acted in the same way here." This answer did not satisfy his dull examiners. Their lordships could not mean to insinuate a taunt by the next question. "Is there any historical proof on the subject *except that belief of yours*." Dr. Doyle then overwhelmed their lordships with the the following voluminous array of historical facts.—"To say there is no historical proof, would seem to furnish an argument against this matter, which I cannot admit to be just, because I find a frequent proof sustained by the general practice,

and if *I cannot lay my finger upon a particular act to show it*, it is not therefore to be inferred that it did not exist." But surely it may be inferred that Dr. Doyle, the eloquent advocate for a fourfold division, was unable to prove that it did exist, and this, after more than a year of laborious research to discover it.

But suppose, that Dr. Doyle's investigation had terminated, more propitiously for his own character and cause, what advantage would he have derived from the discovery? Does he uphold the doctrine, that the trusts and obligations, under which property is possessed in one age, are incumbent and binding after the lapse of several centuries, though custom had abrogated the original complexion, and express statute law had altered, the nature and features of this same property. I undertake, before I have concluded this essay, to establish that the Roman Catholic Church never divided the tithes, as Dr. Doyle asserted they were divided, during the same number of centuries, as the ministers of the Established Religion have been in possession of them; and, moreover, that all the canons and laws enacted during the three hundred years be-

fore the reformation, are every one, diametrically opposed to his position, yet will he set an authority so high upon his own unsupported assertions, in defiance of the decrees of his own cherished and vaunted canons, as seriously to register as his sincere conviction, the following extraordinary declaration, in answer to the question ; “ Is there any evidence of the practical distribution of tithe to the poor.” Dr. Doyle answers, “ The whole history of the church abounds with it. In Ireland the only church law was the canon law of England, and therefore if it can be shown that this application of church property prevailed in England, it will follow of necessity that it prevailed in Ireland.” Thus passing over the period, from the reformation to the present day, when custom had established a different appropriation ; and also refusing to be bound by the practice of his own Church, for as many centuries before Protestantism became the national religion, as have elapsed since that glorious event, he would re-adopt the quadripartite or tripartite division, which he declares, but cannot prove, was the custom of the church in some undefined and remote era.

Arguing on the same grounds, will Dr. Doyle avow, that the owners of Allodial estates, though they became feudal tenants, and had enjoyed their properties for successive generations, under this new tenure, fortified by ample, though changing laws, are, nevertheless, bound to the obligations, under which their ancestors had originally possessed those properties, because it may be discovered that some forgotten law, enacted when a tyrannous system of legislation had prevailed, now remains unrepealed. But, did the varying obligations, as the law changed them, cancel their entire propriety in the land? Did the feudal tenants, who had acknowledged no kingly proprietor of their estates, till the Norman tyrant, lose with the alteration in the condition, the right to possess? Have not the imposts, to which they were liable, been supplied by others, and the conditions, to which they were bound, gradually died away, and with their extinction, has also ceased their liability, and almost any legislative power, to re-enact them. And, yet, shall we be told, that these properties cannot now be retained, unless antiquated and abandoned usages are revived and obeyed? Shall our speculatists

summon the Earl-marshal to the performance of the duties, to which he was subject, though his ancestors refused our first Edward to perform them; and must he relinquish his wide domains to the cupidity of some learned antiquarian, who cannot find, except in the visions of his ravenous hostility, any justifiable ground for a recurrence to an abrogated custom.

But, to bring this view of the subject more closely to issue, will our revivers of the ancient conditions of property, summon to the field the present representatives of the Lords Abbot? The Norman conqueror, not only altered the tenure, by which they held their estates in free alms into Baronies, but he subjected them to military service. And on such a foundation as this, can our rapacious antiquarians, in order to alleviate the burdens of the people, by a diminution of the expenditure of our military establishments, upbraid the Duke of Bedford in England, and the Marquis of Landsdowne in Ireland, for a forfeiture of the trust, under the unrepealed conditions of which, they possess their thousands, and hundreds of thousands of Church lands, because they did not, during the late bloody and

protracted war with France, attend the army of their king for forty days, at their own expense ! Or, if summoned on some future occasion to the performance of these duties, to which, as the successors of the Lords Abbot they are liable, shall their sovereign resume his long-unused authority, to compound, at his own pleasure, for their absence, according to the terms of the feudal law.

Surely, we need not debate this silly proposition further, that whatever were the conditions of property one thousand years ago, its present possessors are now bound to the fulfilment of the same obligations. For to this, must the arguments of our opponents be reduced, if even they can substantiate the proof, to which I challenge them, that the present property of the Church of England and Ireland was ever subject to a deduction of one-half for the poor and the fabric of the Church.

Dr. Doyle asserts, “ I find the canons of the councils to be uniform here and on the Continent, so that the observations that are verified with regard to the Catholic Church on the Continent, are equally verified with regard to the Church in England, it being one body, subject

to the same legislation." The only Ecclesiastical laws which ever directed the appropriation of Church property in England, from the thirteenth century, when the parochial right to tithe was established, to the Reformation, no where enjoin, no, not in one solitary instance, the quadripartite or tripartite division. Who can believe, that Dr. Doyle was ignorant of this? Who can believe, if any council, or canon, or law, authorising such a division, could be produced, that his sedulous assiduity, sharpened by his avidity for the diminution of the revenues of the Church, would not have discovered it, and that he would not, with triumphant zeal, have "laid his finger upon it." In all the canons of the church of England adopted by popish kings, suggested by popes, authorized by Roman Catholic Archbishops and Bishops, and sanctioned by Roman Catholic Senates, not one such canon can be found. If it be in existence, let Dr. Doyle, though he could not, at the moment, edify the Tithe-committees by a reference to it, now after renewed exertion, aided by all "his familiarity with these old canons," produce it. Surely, though he may refuse to enlighten me, he will vindicate himself.

Within the immediate jurisdiction of the Roman See, it may be admitted, that such a division, had, if not the sanction of practice, at least the authority of law. I shall not here enquire, for it is nothing to our purpose, whether this law was generally observed in Europe. I do not believe it was, not even in France, at least for eight hundred years I know it was not, though sanctioned by the vaunted council of Mascon, but yet it was not obeyed even within the verge of the bishoprick, where this remarkable council was held.* Nay more, this council was never received into the canons of any general council; further, it was never even adopted into any known body of canon law. And strangest fact of all, it was never introduced to the knowledge of ecclesiastical antiquarians, until the reign of Charles fifth, and then by Friar Crab, in his edition of the councils.

Our opponents, and particularly Dr. Doyle, struggle, to maintain that the admission that the quadripartite appointment of tithe, was the practice of the Roman Catholic continental churches, involves the acknowledgment that a

* See Note F.

similar custom prevailed in England and Ireland ; as the British Churches, in ecclesiastical affairs, were in subjection to the Roman Pontiff. To this device and subterfuge are our adversaries driven. But what does such a sophistical assumption reveal ? That neither Dr. Doyle nor the abettors of his opinions, can substantiate by direct evidence, that this practice did prevail in this kingdom. It is an argument of ignorance, or of presumption. The British Church, however corrupted by her alliance with that of Rome, was ever saved from the pollution of that prostration, which would have rendered her the pliant slave and obsequious tool of an imperious master. If occasionally, and the period was short, she slumbered in her native dignity, her proud spirit soon rebounded from the degradation; and in an erect and independent posture of defence she hurled back the comminations and anathemas of her ambitious and spiritual Head. Here we need not repeat the multitude of occasions, which, long before the days of the eighth Henry, afforded notable evidence of a reforming spirit. Even in the seasons of the grovelling vassalage of her ecclesiastics, her proud monarchs and her un-

bending nobles, indignantly scorned the abomination of submitting the inheritance and government of the Church, to the griping avarice or dictatorial despotism of the Popes of Rome. From this spirit, arose the laws * against provisors and of præmunire, the latter of which as the preamble of the 16 Richard ii., informs us, was made at the prayer of the Commons of England, who complained that by the avarice and tyranny of the Court of Rome, “the crown of England, which hath ever been free and subject unto none, would be submitted unto the Bishop of Rome, to the utter destruction of the King and the

*See, for further evidence on this subject, the numerous authorities which Sir John Davies adduces, not only attesting the independence of the British Church, but the jealousy of the nobles and commons of England, in vindication of her national privileges. The following apposite passage is taken from his “Case of præmunire on the conviction and attainder of Robert Lalor, priest, being indicted upon the statute of 16 Rich. 2. cap. 5.”

“Nowe Master Lalor, what thinke you of these things? Did you believe, that such lawes as these, had beene made against the Pope, 200, 250, 300, yeares since? Was king Henry VIII. the first prince that opposed the pope’s usurped authority? Were our Protestants, the first subjects that ever complained of the court of Rome? Of what religion, thinke you, were the propounders and enactors of those lawes?

whole realm, which God defend." The Institutes, the Code, and the Digest of Justinian; the Laws of Gregory, the Decrees of the Rota, and the Imperial Chamber, the whole body, in fact, of the canon and civil law of Rome have never been, no more than they, at this moment are, any part of the laws of England, farther than, in some instances, immemorial usages derived from them, and forming the ground work of our common law, or some other parts introduced into the body of our statute law, afford to that enormous mass of ecclesiastical domination the honor of British adoption. The nobility of England declared, in the reign of Stephen,

Were they good Catholikes? Or, good subjects? Or, what you will not say, they were Protestants, for you will not admitt the reformed religion to bee so ancient as those times, neither can you say they were undutifull, for they strove to uphold their leige lord's sovereignty. Doubtless, the people in those days, did generally embrace the vulgar errors and superstitions of the Romish Church, and in that respect were Papists, as well as you, but they had not learned the newe doctrine of the Pope's supremacie, and transcendant authority over kings. They did not believe hee had power to depose princes, to *abrogate the fundamental lawes of the kingdom and to impose her canons, as binding lawes upon all nations, without their consents.*" See primer report des cases &c. case of præmunire p. 87.

“that the realm of England, *hath never been unto this hour, neither by the consent of our Lord the King*, and the lords of parliament, shall it ever be, ruled or governed by the civil law.”*

“The civil and canon laws,” says Sir William Blackstone, “considered with respect to any intrinsic obligation, have no force or authority in this kingdom; they are no more binding in England, than our laws are binding at Rome.”†

This statement applied to his opinion respecting the fourfold division of tithe, naturally suggests this question. If the canon and civil law of Rome enforced the necessity of the quadripartite partition of tithe, is the injunction derived from their authority, binding in England? To this, the answer is, according to his own admission—if immemorial usage has sanctioned the decrees of the Roman canon law, or, if our statute law adopting them or any part of them, has commanded their observance, then, the imperial civil law is obligatory in this kingdom. But, if the usage here is opposed to the law and practice there, and if no evidence

* Selden Jan. Anglor. lib. 2.

† Commentaries I. p. 14.

in our British statutes, is recorded of the naturalization of this foreign legislation, "then the civil or canon laws of the Empire are no more binding in England than our laws are at Rome."

And here we demand of Dr. Doyle, as did the noble lords on the tithe committee, demonstration of the practice as to the fourfold or tripartite division of tithe in England. We demand to know the British statute that enjoined it, or the British canon that sanctioned it. Dr. Doyle must render some more intelligible evidence than his own belief of the practice; some more tangible documents than his own suspicions of the usage. His Noble examiners asked, "Is there any historical proof on the subject except *that belief of yours*." He could produce no proof then. Can he now? He "could not lay his finger upon one particular act," to justify his assertion. Time and reflection, and the assistance of his learned friends, have, doubtless, furnished him with arguments, that will silence all controversy on the subject. We, the clergy of the Established Church, have a right to require, that we shall be permitted to believe of him, what he has asserted he can prove;

that he has not constructed a theory upon his own wishes; and that all his display of learning, and his unproduced documentary evidence from history, from law, and practice, have some other foundation, than his vituperative rancour, and designing and vindictive vengeance against the ministers of the Established Church.

The question is plain—the answer ought to be simple. Where is the statute to be found, or, where is the historical evidence to prove, that the quadripartite or tripartite division of tithe was the custom of the clergy of England and Ireland, before the Reformation? Judge Blackstone * has declared, that without such authority, “the civil or canon laws of the Empire are no more binding in England than our laws are at Rome.” Thus Dr. Doyle is at once, and for ever, excluded from all appeal to Continental churches, or to his cherished and familiar friends, the canons, except those of England and Ireland, by which I am content, that the property of the Church, shall be regu-

* We shall refer again to the authority of Judge Blackstone, and show what in reality were his opinion as to the fourfold division of tithes.

lated, though they were enacted by Roman Catholic monarchs, archbishops and bishops, and legates from the Pope himself.

In this dilemma, it may be unkind to desert our great adversary. We will not impose on him, the hard and cheerless task of seeking for evidence, of the usage as to the quadripartite or tripartite division of tithe in England and Ireland. Nor shall we impose on him the onerous obligation of instituting a forlorn search, among British statutes, to verify his statements. We shall relieve him of the toil, by instituting ourselves an appeal to the canons which regulated ecclesiastical affairs in these countries, from the thirteenth century to the Reformation. But in recompense of our gratuitous services, we only ask the poor requital of an acknowledgment, on his part, of the errors, into which an overzeal for the purification of the Reformed Church, has betrayed him. That is, if he shall be convinced of his transgressions. If, however, he continue unrelenting and stubborn in his opinions, we must only, in mercy, beseech him to give a fair and candid replication to our defence.

CHAPTER II.

The Nature of the English Canon Law, and its application to Ireland explained.

WE have seen, by evidence adduced in the former chapter, that Stephen, early in the twelfth century, and Richard the Second, in the fourteenth, in union with the nobility and commons of England, declared that the realm of England had never been ruled by the civil law. Therefore we have no privilege to appeal to its decisions, to ascertain a knowledge of the customs by which ecclesiastical property was regulated in this kingdom. But, besides the Imperial code, there was a body of national canon law of England and Ireland. To these canons, Dr. Doyle, on some occasions, referred. He acknowledged that in Ireland, the only church law was the

canon law of England, and, therefore, if it can be shown that this application of Church property prevailed in England, it will follow of necessity that it prevailed in Ireland."

On this ground, I am content to contend the point in dispute with Dr. Doyle, and that the disposition of tithe shall be adjusted according to the decision of the tribunal, to which he has appealed.

It may be necessary therefore to afford the reader some information respecting the history and nature of the English canon law. It was composed of Legatine constitutions, enacted in national synods, and of Provincial constitutions, which are principally the decrees of provincial synods. The earliest of the former were held under Cardinals Otho and Othobon, who were sent as legates into England from Pope Gregory IX. and Pope Clement IV. in the reign of Henry III. in the years 1236, and 1268. The earliest of the latter commences in the same reign, in 1222, and terminates with their adoption by Archbishop Chichele, in the reign of Henry V. and in the year 1445.

From that time to the present no addition

sanctioned by the legislature, has ever been made to the canon law of England. At the reformation, the adoption of a new code had been designed; but that design was never carried into execution. Cranmer, and seven other persons, had been commissioned to adjust and prepare it: and having completed, were bound to submit it, to a council of thirty-one commissioners, who were empowered ultimately to decide upon its merits and adoption. The statute 25 Henry viii. c. 19. which was revised and confirmed, by 1 Eliz. c. 1. authorised, till the contemplated review of the canons should be confirmed, that the old legatine constitutions and provincial synods, should have the force of law, so far as they were not repugnant to the spirit of the reformation, and of the secession of the Church of England from that of Rome. But this project never attained a prosperous conclusion.

Therefore, in this national canon law, we have not only the whole body of the canon laws, which have regulated Ecclesiastical affairs in England since the reformation; except in the instances where their authority has been over-

ruled by express statute law ; but, what is more important to our present purpose, we are provided with the only laws, which, since the parochial right to tithe was established, ever regulated in England and Ireland, the disposition of the revenues of the Church.

On this ground, therefore, our adversaries must contend. Dr. Doyle has chosen it, as the field, where he is willing to display the resources of his mind. We now come forth to meet him, and are willing that the battle shall be decided by the authority of these canons, whether the quadripartite or tripartite division of tithe had ever been the practice of the Church of England and Ireland. We possess no other authorities, to whom we can appeal ; there is no other umpire that can decide. To these authorities, and to the judgment which they shall pronounce, we are willing to yield obedience. But in consenting that the clergy of the Reformed Church, shall be put on their trial before a court, where the legates of popes presided, whose decisions Popish monarchs sanctioned, and Roman Catholic Archbishops and Bishops and clergy, consecrated as the legalized practice and

usage of the Church, from the year 1200, to the reformation; we have no doubt the privilege of demanding, that not only the defendants in this cause, but the plaintiff, who is pre-eminently no less a personage, than Dr. Doyle himself, will engage to submit to the award, which the laws of his own Church, shall, on the momentous controversy, pronounce. If, however Dr. Doyle shall stubbornly linger in his error, and cling to the opinions of which his own wishes have been the parent, and if he be resolved to renew the contest, let him appeal. But to whom or to what, shall he appeal? There is no other—there can be no other Judge, whose authority for more than six hundred years, has regulated Ecclesiastical revenues, than theirs, by whom he has consented to be judged, and to whom we now refer our cause.

Before we proceed to an examination of the canon law of England, we have two preliminary objections to remove. This is done, for the refutation of other objectors than Dr. Doyle, for he, as I will shew, coincides, at least, in one of the points, I am about to explain.

First, was the canon law of England appli-

cable to Ireland, at the period of the establishment of the parochial right to tithe ?

Secondly, were the usages of the common law of England, applicable to Ireland, at the same period ?

The Ecclesiastical, as well as, the common law of England, was made applicable to Ireland, at a period contemporaneous with the enactment of the legatine constitutions of Otho and Othobon, and as early as any of the provincial constitutions which were received into the national canon law. If this point, as well as the second objection, be satisfactorily explained, the result will be, as to the determination of the question at issue, that the destiny of the two branches of the united Church must be regulated, according to the authority of the same law.

As to the first, namely, the applicability of the English canon law to Ireland, Dr. Doyle has confessed "that in Ireland, the only Church-law, was the canon-law of England." This did not arise, simply, from the effects of the English invasion, but an express declaration of the uniformity of Ecclesiastical law in England and Ireland, is embodied in the preface to the Con-

stitutions of Othobon. “*Pio zelo Excitatus et justa auctoritate fretus D. Othobonus sequentes constitutiones Angliæ, Scotiæ, Hiberniæ et Walliæ Constitutus est.*” These constitutions were enacted in the year 1268, in the reign of Henry III. It may be objected, that these were words of form, but that no practice, in obedience to the law, consecrated it, in Ireland. Fortunately, however, there is abundance of evidence to establish, that the same monarch, in whose reign these constitutions were enacted, regarded not only the interests of the English and Irish Churches, with equal solicitude, but applied to each, the same Ecclesiastical laws, in order to effect their improvement, and assimilate the arrangement of their respective tithes.

In the 44th year of his reign, he caused to be issued in England, an enquiry about “the profits, estate, tenure, and issue of the King’s tenants.” The object was to ascertain to whom the tithes, derivable from these estates, belonged, as they were claimed, in some cases, by the Abbots, sometimes by the Rectors of the Parish Church, as well as by others.* In the same reign, a similar

* Annal. Monast. Burtonensis apud oxon.

commission was sent into Ireland, to the Archbishop of Cashel, the Bishop of Ferns, and the Bishop of Lismore, commanding them to take with them, Jeffrey De Mareseo, then Justice, or Lord Deputy of Ireland, or some other person, whom he should appoint, to enquire, by the oaths of Laymen and Clergymen, whether Bartholomew De Camera, Parson of the Chapel of Limerick, or William, of Caradiff, treasurer there, was seized of the tithes, "*De Piscaria et Molendinis De Limeric, tempore Johannis Regis, Patris Nostri, ante guerram Motam inter ipsum et Barones.*" *

We need not burden our narrative with further proof, abundance of which is at hand to the same effect. Though, perhaps, we ought not to omit to state, that the signature of the Archbishop of Dublin, as representative of the Irish Church, was affixed to Magna-Charta, at Runnemede. His name follows that of the Metropolitan of England, and takes precedence of all the other Bishops.

As to the second objection, namely, as to the application, to Ireland, of the common law of

* Pat. 9 Hen. 3. Par. 2. Memb. 3.

England, I shall adduce, without comment, the most full and satisfactory evidence. It is necessary to do so, in consequence of an assertion of Mr. O'Connell, that tithes in Ireland, had no common law right to defend them. I shall not, here, enter into the question, at what time tithes were payable in Ireland. The following document is sufficient for the present argument, as it proves that the usages of the common law of England, were applied to Ireland, at a period contemporaneous with the earliest part of the national canon law, which is to decide the question, as to the distribution of tithes.

“Quia pro communi *unitate* terræ Hybernix et pro *unitate* terrarum, provisum est quod *omnes* leges et *consuetudines*, quæ in regno Angliæ tenentur, in Hybernia teneantur, et eadem terra iisdem legibus subjaceat et per easdem regatur, *sicut* Johannes Rex cum illuc esset, *statuit* et firmiter mandavit; ideo volumus, quod omnia brevia de commune jure, quæ currunt in Anglia, similiter currant in Hybernia sub novo sigillo nostro, &c. in cujus rei, &c. teste me ipso apud Woodstock.”*

* In Archivis Turris London 30 Henry III. Patent Memb. 3.

Our argument, now, cleared of all objections and difficulties, stands thus. The parochial right to tithe was not established in England, till the commencement of the thirteenth century. From that period to the reformation, the Roman Catholic Clergy, respecting their general discipline, as well as, the disposition of the revenues of the Church, were guided by the authority of a domestic or national canon law. The civil, or canon law of Rome, which, it is asserted, enjoined the fourfold division of tithe, had been abjured in England, before the enactment of the English canon law. No part of the foreign ecclesiastical law was binding in these kingdoms, except those parts, which had the authority of express statutes, limiting the observance of particular portions of it; or, when usage, growing out of an imitation of foreign legislation, had sanctioned detached pieces of the Imperial code. The British canon law, was applied to Ireland, at a period contemporaneous with the establishment of the parochial right to tithe in England, as well as, all the usages of common law, which had, for ages, been observed in the sister-kingdom. Therefore, it remains, now, for enquiry,

what did the canon law of England regulate and ordain, relative to the alleged appropriation of tithe to the reparation of the Church, and the maintenance of the poor ; for we are limited to these documents, as the only records, which enable us to form an opinion, and to decide, upon this much ventilated question.

CHAPTER III.

*Proofs from the Canon Law of England, to whom
appertains, the Reparation of the Church.*

DR. DOYLE, addressed the following sentences to the tithe committee. I beseech my readers to remember them.

“In Ireland the only Church law was the canon law of England, and therefore, if it can be shown that this application of Church property prevailed in England, it will follow of necessity that it prevailed in Ireland.”

“The Church property, whether in Ireland or England, was never confiscated and never vested in the Crown—the deposit remained untouched—the trustees were exchanged, but the law did not vary, except that it changed the trustees. In Catholic times, the law gave the tithes to the Catholic Incumbents, and in Protestant times, it gives them to the Protestant Incumbents ;

but in Catholic times, the law was, that he should divide it in the way I have stated.”

“The tripartite division is found to have prevailed after parishes were formed through England and the rest of Europe. I find no difference in legislation. I have ascertained by books of the practice in England, and I find it uniform with the practice in Ireland.”

Again I implore the reader to peruse these sentences, once more, before he proceeds.

Some of the most ancient canons in the English code are the Legatine Constitutions of Otho* and Othobon.† Their title, and the date of their

* Concilium Pan-Anglicanum Londini habitum in Ecclesia Cathedrali Divi Pauli, crastino octavarum S. Martini, Anno Domini 1236 (secundum Matthæum Pariensem 1237) id est, 20 (alias 21.) Henrici III. Præsidente Dom. Othone S. Nicolai in carcere Tulliano, Diacono Cardinali, Legato Dom. Papæ Gregorii IX. assidentibus sibi Archiepiscopis S. Edmundo Cantuariensi et Waltero Eboracensi, necnon aliis Angliæ Episcopis. Vide Con. Leg. Oxoniæ Edit. 1679.

† Concilium Anglicanum, a Domino Othobono Sancti Adriani Diacano Cardinali, Sedis Apostolicæ ad Regnum Angliæ, necnon ad Scotiæ, *Hiberniæ*, Walliæque partes Legato, celebratum in Ecclesia Cathedrali Sancti Pauli Londoni, nono Calendas Maii Anno Domini M,CCLXIX, et pontificatus Domini Clementis IV. Papæ Anno quarto, id est, anno

adoption, as part of the ecclesiastical law of England, I have inserted in the notes. A very learned and accurate commentary upon them was written by John De Athona,* several years before the close of the thirteenth century. From the constitutions and the gloss we are enabled to derive a clear knowledge of the laws which governed, and the practice which regulated, the appropriation of the revenues of the Church, during the thirteenth century. And even before it, as reference is constantly made to the *consuetudo* prevailing before the enactment of

Henrici III., illustris Anglorum regis quinquagesimo secundo, præsentibus Bonifacio Cantuariæ et Waltero Eborum Archiepiscopis, Episcopis, Abbatibus, Prioribus, Decanis, Archidiaconis, cum aliis dignitatibus ecclesiasticis Vide *Con. Legat.* p. 75.

‡ Johannes Actonus vel de Actona, perperam Athon nonnulli vocant, in Anglia natus, Oxonii ad annos bene multos in studiis enutritus, tandem ibidem utriusque Juris Doctor creatus est. Postea Lincolnensis Ecclesiæ factus canonicus, ad alios docendum, atque etiam ad scribendum animum appulit. Scripsit inter alia multa Septuplum et apparatus super Constitutiones Legatorum Othonis et Othoboni librum unum. Claruit anno Redemptionis 1290, Regnante in Anglia Edwardo Primo. Vide Pitseus de Illustribus Angliæ scriptoribus.

those laws. This information we glean from the commentary of Athona. Yet, neither in any one of the canons of these councils, nor in the exposition upon them, is the quadripartite or tripartite division ever enforced, or even alluded to, as the practice of the Church, at this remote period. While the gloss of Athona distinctly proves that the consuetudo, relative to the reparation of the Church, and the maintenance of the poor, was directly opposed to any such custom.

We shall now enter upon an accurate examination of these ancient records, and shall address our attention primarily to the question, to whom did the reparation of the Church appertain?

The constitution, “*De domibus ecclesiarum reficiendis*,”* after regulating the laws, relative to the repairs of the manse and the buildings connected with it, states “that it is the duty of the Bishop to see that the chancel of the Church is kept in repair by those to whom this duty appertains.” Upon this passage there is a voluminous explanation by Athona, “this canon alludes to the common custom in England, by which

* Consti. D. Othob. p. 112. Edit. Oxon. 1679.

the repair of the nave of the Church, where the lay parishioners sit, belongs to the parishioners themselves."

Hence it is evident that the custom was so well understood, of the parishioners' obligation to repair the Church, that in the canon of Othobon, no express mention of, but an allusion only is made to, the subject. The doubtful point is explained, namely, to whom^s belonged the reparation of the chancel. This was regulated, as we shall hereafter see, according to the prevailing practice, in different places. Thus then it appears, that in the thirteenth century, it was the common custom in England, that the parishioners were bound to the reparation of their parish Church.

Athona afterwards adds, "*Certe de consuetudine, Parochiani etiam Laici ad hujusmodi reparationem compelluntur, populus itaque laicus hujusmodi laudabilem consuetudinem cogitur observare.*" Not. Atho. ad tenentur. In these words, he more emphatically insists, that, undoubtedly, by custom the parishioners are bound to repair, and that the people (adding the word *laicus*, thus suggesting the accustomed exclusion

of the clergy from this charge) are compelled to observe this laudable custom.

The learned commentator then, at large, discusses the duties which devolve upon the Rector, in connection with the subject of reparation. “*Licet enim per consuetudinem exoneretur Rector, a sumptibus præstandis, non tamen exemptus a curâ, et sollicitudine impendenda. Item Rectoris hoc interest, nedum propter decentiam Ecclesiæ, sed etiam, quia Episcopo cujus mediate interest singulis annis, si exigatur de hujusmodi reparatione debeat Rector reddere rationem. Audiet ergo Rector computum expensarum circa hujusmodi fabricam, et etiam legatorum ad usum fabricæ relictorum, et omnium consimilium. Credo quod, unusquisque parochianus teneatur ad hoc, juxta portionem Glebæ, seu terræ quam possidet intra ipsam parochiam et juxta numerum animalium quæ nutrit ibidem.*”

From hence, we learn, that the rector was exempted from all expense in the reparation of the Church—that his sole duty, connected with it, was the exemplification of that natural solicitude for the adornment and comfort

of the house of God, which his sacred obligations demanded. So well understood was the duty of the parishioner, on this subject, that the proportion, which each contributed, was regulated according to the number of acres he possessed, and the number of cattle which he fed. The Church cess, then, is no modern introduction, of which the cupidity of griping Churchmen has been the parent, but it has the venerable sanction of more than six hundred years, to refute the slander of those, who falsify history, law, and reason, to cover, or to justify, their hatred against the Church of England. The assertion, that this custom had the sanction of six hundred years, is an incomplete declaration of the venerable defence, with which time has invested it. For though Athona wrote in the thirteenth century, he states, that the canon of Othobon, enacted in a council of all England, in 1268, alluded “*communi consuetudini Anglicanæ, per quam, defectio navis Ecclesiæ, ubi insident ipsi Parochiani laici, ad ipsos Parochianes pertinet.*” How many years, previous to that, in which the council was held, were sufficient to establish a common law usage in pro-

perty, I shall leave, as a suitable penance, to our learned lawyers, devoted to spoliation, to discover. Enough, surely, is ascertained, for the vindication of the argument I have undertaken to maintain.

Come we now to the Provincial Synods, assembled at Oxford, when Stephen Langton was Archbishop of Canterbury. This synod was held under the same monarch, Henry III., as that of the legate of the Roman see, but at an earlier period, being in the year 1222.

In the synod, “*De decimis et earum solutionibus*,” are these words, “*Decimæ, tam prædiales quam aliæ, sine difficultate et diminutione et cum omni integritate solvuntur secundum quod canonum continent instituta. Concedimus etiam quod quilibet Sacerdos Parochialis detentores decimarum in sua Parochia potestatem coercendi habeat.*” Again, “*In præstandis decimis, et maxime Prædialibus, nullæ deducantur expensæ.*”*

* *Constitutiones Provinciales in concilio Oxon. celebratæ, editæ per dominum Stephanum Cantuariensem archiepiscopum, Anno Domini 1222, et anno regni regis Henrici, filii Johannis, octavo, sedente Honorio 3, Romano Pontifice.*

This appears to establish, with sufficient distinctness, that the *Parochial* Priest had the right to the tithe, without any diminution or subtraction. Can the most lynx-eyed scrutiny here discover, even a legal doubt, to hang a hope upon, that the custom of the church in 1222 was, (and being then a custom, it was consequently one of many years before) that any part of the tithe of the parochial priest, was dedicated to the use of the poor, or for the reparation of the Church? Who can believe, that, if a contrary custom had prevailed, that words so emphatical and replete with accuracy, would have been employed, as that the tithes should be paid to the parochial priest, without any diminution, and that he should be invested with the legal authority of compelling those who refused to pay them “in sua parochia.” Here, too, we find the plausible slander against the Church of modern times, that she insists now on the tithe not only of the land, but of the labour, seed, and all the expenses of tillage, fully and satisfactorily refuted. Such was the custom of most ancient days. Here it has the authority of the earliest canon law of England, and the prevail-

ing weight of more than six hundred years, to give it energy and practice. “In præstandis decimis, et *maxime* Prædialibus, nullæ deducantur expensæ.”

In* 1305, a synod was held at Merton, in the reign of Edward I. In one of the constitutions of that synod, which I have quoted in full

* Constitutiones Provinciales Domini Roberti de Winchelsey Cantuariensis Archiepiscopi, apud Merton editæ Anno Domini 1305, anno Regni Illustris Regis Edvardi primi 33. Clemente 5, Cathedram Papalem occupante, qui transtulit Sedem Avinionem. p. 34.

“Quid Parochiani invenire debent, et quid Rectores.”

Et ut Parochiani Ecclesiarum singulorum Archidiaconatum Cantuariensis Provinciæ sint de cætero certiores de defectibus ipsos contingentibus, ne inter rectores et episcopos ambiguitas generetur, pro temporibus successivis volumus de cætero et præcipimus, quòd parochiani teneantur invenire omnia inferius annotata; videlicet legendam, antiphonare, graduale, psalteria, troparium, ordinale, missale, manuale, calicem, vestimenta principalia, cum casula, dalmatica, tunica, et cum capa de choro, cum omnibus suis appendiciis, frontale ad magnum altare, cum tribus tuellis, tria superpellicia, unum rochetum, crucem processionalem, crucem pro mortuis, thuribulum, lucernam, tintinnabulum ad deferendum coram corpore Christi in visitatione infirmorum, pyxidem pro corpore Christi honestam, chrismatorium, velum quadragesimale, vexilla pro rogationibus, campanas cum chordis ad easdem, feretrum pro defunctis, vas pro aqua benedicta, osculatorium, candelabrum pro cereo paschali, fontem cum sera, et reparationem ejusdem,

in a note, the obligations imposed on the parishioners, are fully and precisely recapitulated. They were bound, not only to the reparation of the nave of the Church within and without, the building of the parochial cemeteries, and the walls to defend them, but to all the costly and multitudinous ornaments of the Church, as well as the rich and attractive appendages of all the august ceremonies of the Roman religion. These obligations are declared, by the canonists, to be due “*tam de jure, quam de consuetudine.*” And the same authority is alleged in defence, not alone of the reparation of the church, but of the glass windows, and the images, which in holy confusion decorated the walls, but particularly those placed in the chancel and over the altars, being specially designated, in consequence of the greater care and expense which were

imagines in ecclesia, imaginem principalem in cancello, clausuram cœmeterii, reparationem navis ecclesiæ interius et exterius, tam in imaginibus, quam in fenestris vitreis, reparationem librorum et vestimentorum, quandocunque contigerit eosdem reparationibus indigere. Cætera autem omnia tam in reparatione cancelli, quam in libris et ornamentis aliis hic non expressis, secundum diversas consuetudines et approbatas locorum, rectoribus et vicariis incumbit in omnibus reparari sumptibus eorundem. p. 36.

bestowed on these parts of the church. Even the Priests sacerdotal habits; even the books used in holy ceremonies; even the repairs of the former, and the *mending* of the latter, are not omitted in this curious, but very precise catalogue.

To these several duties, were the parishioners, and their properties, liable, by law and custom, in the year 1305. The successors of these parishioners, whether directly as heirs, or as purchasers of their estates, are bound to the fulfilment of the same responsible duties. They have succeeded, in all the various modifications, which property, from a period so remote, has undergone, not only to the possession of the land, and the advantages from it accruing, but also to the incumbrances which their ancestors bore, and, by law and custom, bequeathed, with their estates, to all their future heirs. The portion of the landed property of the kingdom, which has not descended by inheritance, but has become the right of its possessors, by purchase, is burdened by a similar charge. For the money paid, has, in every case, been diminished in proportion to the liabilities, to which, by inheritance,

it was subjected. At the Reformation, the landed property of the kingdom was vastly increased in value, by the removal of a great part of this parochial impost. The religious ordinances and ceremonies of the Reformed Church, being less costly, and more simple, than the august and sumptuous appliances to devotion, which in Roman Catholic worship were deemed an important, and indispensable part of religion, every parish in the kingdom, was, therefore, relieved from the necessity of providing all the articles in this extensive catalogue, except these inexpensive and simple items, which the canons of James I. continue to impose. Besides the Protestant Clergy of the Established Church, participate alike, with their fellow citizens, in all the taxes imposed by the legislature; a burden, from which the ecclesiastical property, though immeasurably greater than the Church now possesses, was relieved. Even partially, this exemption continued in the reign of Henry VIII. Therefore, beside the relief afforded to the landed property of the kingdom, by the curtailment of the parochial impost, as levied for the expensive celebration of Roman Catholic ordinances; a sub-

straction is also to be made, from the burdens to which the land was subjected, in defraying the national taxes, which since the Reformation, the spiritual members of the church, share alike, with their fellow citizens. And this relief, to the land, is to be calculated in the ratio of the amount of taxation, to which Church property is now liable, for before the Reformation, a part, equal to that now paid, would have been levied from it.

As we had the advantage of the evidence of John De Athona, on the practice of the Church in the thirteenth century, when engaged in examining the laws of Othobon, passed in the same century, we have in the present instance the learned commentary of Lyndwood, in the fifteenth. Thus we are provided, first, with the express declarations of the synodal law in England, in the early part of the thirteenth century, namely, in 1222, and also in 1268. We have secondly, the history of the customs observed by the Church on the disputed question for nearly the whole of the thirteenth century, in the Commentary of Athona. We have thirdly, the declaration of the Ecclesiastical law,

on this point, in the synod quoted from the canons enacted at Merton in the early part of the fourteenth century, namely, in 1305. And fourthly, we shall now adduce evidence of the practice of the Church, in the fifteenth century, from the commentary of Lyndwood who wrote in 1423.

On the canon quoted from Archbishop Winchelsey's constitutions, enacted at Merton, Lyndwood remarks in a note "*ad reparationem.*" "*Et idem intelligas de nova constructione, quando opus erit.*"* And again,—"*Et nota ad hanc reparationem contribuere debent nobiles et ignobiles.*" Such was the practice in the fifteenth century. John Andreas, who is described by Baldus as "*Juris canonici fontem et tubam,*" declares, "*non credo, quod posset excusari aliquis, licet velit renunciare usui ipsius Ecclesiæ.*"† This extract is evidence that the Roman Church, in 1330, when Andreas wrote, had not attained to those refined doctrines of Liberty, which justify in a Roman Catholic

* *Provin. Guliel. Lyndwood de Ecclesiis Edificand.* p. 253.

† *J. Andreas, extrav. com. c. 1.*

Bishop, a pastoral address to his flock to evade the payments due to the Church established by law. But to be sure, he can plead in his vindication, this important difference in the fourteenth and nineteenth century, that the church whose members now refuse tithes, was the established church to which they were paid, and the church, which he now persecutes, is that which deprived him of them. †

In the year 1342, when John Stratford was Archbishop of Canterbury, a provincial coun-

* Perhaps it may refresh Dr. Doyle's memory and improve his morals, to quote for his meditation one of the canons of the Council of Trent. Surely there is prophetic satire in it. "NON SUNT FERENDI QUI VARIIS ARTIBUS, Decimas Ecclesiis obvenientes, subtrahere moliuntur, aut, qui ab aliis solvendis temere occupant, et in rem suam vertunt, cum decimarum solutio debita sit Deo. *Et qui Eas dare noluerint aut dantes impediunt, res alienas invadunt.* Precipit igitur sancta Synodus omnibus cujuscunque gradus et conditionis sint, ad quos decimarum solutio spectat, ut Eas (ad quos de jure tenentur) in posterum Cathedrali, aut quibuscunque aliis Ecclesiis, vel personis, quibus *legitime* debentur, integre persolvant. Qui vero Eas aut subtrahunt, aut impediunt, Excommunicentur; nec ab hoc crimine nisi plena restitutione secuta, absolvantur." *Sess. 25, de reformatione. cap. 12.* Dr. Doyle either laughs at the Council of Trent, or he satisfies his conscience, by the pious reflection that the tithes are due to himself and his Church.

cil * was held in London. To one of the canons of that council, I have referred in the note. From which it appears that no interruption had occurred in the parishioners' obligation to the reparation of the church. This duty is as fully expressed, as in the other canons quoted from more ancient councils. The common law usage, however, is here more strongly expressed, "*de consuetudine laudabili in nostra Provincia diutius obtenta facere, ac quoties fuerit necesse, reparari suis sumptibus teneantur.*"

We have here the additional fact stated, that the lands and properties of the monasteries, were bound to contribute to the reparation of the Church, wherever they possessed farms within the verge of the Parish, whose church required it. We also learn, what we did not, indeed, require the specific statement of an Ecclesiastical declaration to announce, for all history proclaims the odious censure, that the monasteries gathered together wealth for the indulgence of the most debauched propensities, while the sacred duties

‡ Consti. Provin. J. Stratford Cantuari. Archiepiscopi Editæ Londini, in concilio Provinciale, x die mensis Octobris. Anno Domini 1342.—See note G.

of Religion were totally neglected—the parochial minister defrauded of his stinted revenue—and the Temples of God fell into ruin and decay. But more than all, we have, a law declaratory of the right incumbent on all proprietors of land, whether they occupy them, or let them out to tenants, to contribute “*ad quævis onera Parochianis prædictis incumbentia;*” and this apportionment of parochial taxation, is to be levied “*secundum prædiorum ac possessionum quantitatem in Parochiis existentium.*” These parochial obligations, are afterwards described, as liabilities, to which the land was subject, and which, therefore, in case of refusal of compliance with the right, should be enforced, “*onera, quæ, consideratis possessionum et reddituum quantitibus, imminent vel imponentur eisdem.*”

Upon this Lyndwood remarks, “*Et hoc quod hic dicitur, videtur confirmare notata per John De Athona, viz : quod onus reparationis ecclesiæ concernens parochianos, est onus reale, dicens, quòd unusquisque parochianus tenetur ad reparationem ecclesiæ, juxta portionem terræ quam possidet intra parochiam et secundum numerum animalium.*”*

* Lyndwood, Lib. iii. Tit. 28. De Immunitate Ecclesiæ p. 254.

We have now, in a sufficient number of instances, established, from the canon law of England a perfect similarity to the present times, and the most ancient, of which we have faithful records to guide us. From the commencement of the thirteenth century to the Reformation, the practice has been the same. The canons of the Church, the constitutions of all the clergy assembled in council, the decrees of provincial synods, the laws of the legates of the Roman pontiff, the glosses and commentaries of the most learned canonists of the Church, and, more than all, an unvarying custom, more ancient than the oldest canon, which could be considered as a faithful interpreter of ecclesiastical usage, have each, and all, in one full choir of witnesses, testified that the reparation of the Church was the duty of the parishioner, and not of the rector of the parish.

The Reader must not forget that Dr. Doyle has admitted that the canon law of England was the only Church law in Ireland. He further observed, “that the quatuorpartite or tripartite division was gradually introduced into the Church—that it obtained by degrees the sanc-

tion, not only of the ecclesiastical, but also of the civil, laws throughout Europe ; and that it maintained itself in that shape, till a late period. It seems to have fallen *gradually into disuse about the sixteenth century, or shortly before.*"

He also asserted, and assumed it as certain, "that by the common law of England, which is referred to, by Blackstone, and also from the passage from Ware, that by the statute and canon law of England and Ireland, the application of Church property in those countries, is, or ought to be, that which is designated just now by me in the words of Ware."

The public may now judge, whether Dr. Doyle's assertions, unsupported by evidence from law, canon, civil, common, or statute,—from history—from any one authority—is to be credited in preference to the canons of his own church—canons made at the instigation of Popes—enacted by Popish kings—subscribed by a Popish hierarchy—consented to and adopted by the Popish clergy, and submitted to and obeyed by the Popish population of England and Ireland, from the year 1200, to the Reformation.

Dr. Doyle not only has undertaken to assert, in defiance of the canons of the Church of Rome, for such, in fact, they were, though passed in England, that not only one-fourth or one-third of the tithes was appropriated to the reparation of the Church, but that this obligation was imposed on the clergy, by the express enactments of statute law, his words are, "by the statute and canon law of England and Ireland."

What support Dr. Doyle has derived from the canon law, we have had sufficient evidence produced. Perhaps he will be more fortunate in his other adventurous announcement that his imaginary fourfold division of tithes was enjoined by statute law. In the thirty-fifth year of Edward I., in whose reign one of the canons already adverted to, was passed; a remarkable statute bearing upon the point under discussion, was enacted. In 1305, the synod of Merton decreed, that not only the reparation of the Church, within and without, was the duty of the parishioners, but that all the ornaments, dresses, and images, necessary for Roman Catholic worship, should also be provided by them. In the

very same year, the statute, which I shall quote presently, was enacted, whilst the illustrious Edward I. sat on the throne, of whom Sir Matthew Hale has said, (and I quote his opinion for Dr. Doyle, in order to procure some favorable reception for his wisdom in legislation,) “that more was done, in the first thirteen years of his reign to settle and establish the distributive justice of the kingdom, than in all the ages since that time put together.”*

The 35 Edward I. is entitled, “Statutum ne rector prosternat arbores in cœmeterio,” and proceeds to declare, “Because we do understand that controversies do oftentimes grow between parsons of Churches and their parishioners, touching trees growing in the churchyards, both of them pretending that they do belong unto themselves; we have thought good, rather to decide this controversy by writing than by statute. Forasmuch as a churchyard that is dedicated is the soil of a church, and whatsoever is planted, belongeth to the soil, it must needs follow, that those trees which be growing in the churchyard, are to be reckoned amongst the

* Hale's Hist. C. L. 156.

goods of the church, the which laymen have no authority to dispose, but, as the Holy Scripture doth testify, the charge of them is committed only to priests to be disposed of. And yet, seeing those trees be often planted to defend the force of the wind from hurting the Church : we do prohibit the parsons of the Church, that they do not presume to fell them down unadvisedly, but when the chancel of the Church doth want reparation, neither shall they be converted to any other use, except the body of the Church need like repair, in which the parsons, of *their charity* shall do well to *relieve the parishioners*, with bestowing upon them the same trees, which we will not command to be done, but we will commend it when it is done.

This statute law is in perfect harmony with the canon enacted at Merton, in the same year, and during the reign of the same king. What could be the charity of the parson to the parishioners, unless by the gift of the trees, he diminished the expense, to which, for the reparation of the Church, they were liable. If, according to Dr. Doyle's theory of ancient ecclesiastical practice, respecting tithes, the

clergy were obliged to yield a fourth or a third of them to the reparation of the Church, will he illuminate the Protestant clergy, who, as he declared, cannot be expected to be acquainted with the canons, with his enlightened commentary as to the meaning the British Justinian,* when he recommended to the Roman Catholic clergy of England, to relieve their flocks of their burdens in the reparation of the Church, by charitably bestowing upon them, what, in law, they had no title to demand.

One point only now remains, in which a complete coincidence in the present and ancient practice of the Church, has not been established. To render our proofs as perfect as possible, we shall briefly advert to it. I allude to the reparation of the chancel. Where the rectorial tithes are in the hands of laymen, to them appertains the performance of this duty. Where they are not so, the parishioner supplies the defect. And this precisely was the practice of

* Even among the laws of Canute, one, I find, is, "*Ad refectionem Ecclesiæ debet omnis populus secundum legem subvenire.*" Vide *Chronicon Johan. Brompton. Hist. Anglican. Script. Dec. p. 628.*

the Church in the times, to which we have already adverted.

In the year 1322, a Provincial Council* was held at Oxford, in the archbishoprick of Walter Reynolds. In one of the canons of that council, "De Visitatione Archidiaconi," that officer is commanded, "habeat considerationem ad fabricam Ecclesiæ, et maxime cancelli, si forte indigeat reparatione." Lyndwood, in explaining the practice of the times in which he lived, and the custom of the Church, remarks, "Consuetudo tamen transfert onus reparationis, saltem navis ecclesiæ, in parochianos, *et similiter* cancelli quandoque, sicut satis constat in civitate Londonensi in multis ecclesiis. Et hanc consuetudinem servare debent compelli parochiani, ubi talis est consuetudo."†

The practice varied according to custom, and, as custom sanctioned the usage, it ought to be enforced.

* Constitut. Provin. Walteri Reynoldi Cantuariensi editiæ in consilio Oxon. Anno Domini, 1342. Annoque Regni Regis Edwardi secundi, Decimo sexto, Johanne Vicesimo primo, alias, secundo Papa.

† Lyndwood, Lib. i. Tit. 10. De officio Archidiaconi p. 53.

We now demand of the advocates of the fourfold division of tithe, who complain in unmeasured vituperation of the priestly spoliation of the poor, and of the detention of that portion of ecclesiastical property, destined for the reparation of the Church, that they will first refute the facts and arguments here alleged in justification of present practice. This is but justice, and it is in her name, they violate or struggle to do so, the chartered privileges of the clergy of the Established Church.

CHAPTER IV.

Proofs from the Canon Law of England, as to the Maintenance of the Poor.

WE shall now pass to the consideration of the second branch of our argument, namely, whether since the institution of the parochial right, one-fourth of the tithe has ever been appropriated to the maintenance of the poor? I shall here observe the same order as in the preceding part of the discussion, and shall first refer to the Legatine Constitutions of Otho and Othobon, in the thirteenth century.

In the entire body of the canon law of England, from the year 1222 to the Reformation, I have not found, even one reference to the quadripartite division of tithe, in which, in any sense, its application is commanded to the poor

or the repairs of the Church. In the glosses of the canonists, reference occasionally, and but seldom too, is made to such a distribution, but every such allusion marks the opinion and judgment of the author, as well as the practice and custom of the time, that such an arrangement depended on the injunctions of foreign canons, or, if it had ever existed in England, had long passed into desuetude. In the statute, known by the title of *Circumspectè Agatis*, enacted in the reign of Edward I., in the year 1285, mention occurs of the *Quarta pars*, but it is in a body of laws, prescribing the cases in which the Ecclesiastical Judge shall have cognizance, “non obstante Regia Prohibitione,” and does not refer either to the fabric of the Church, or to the poor. It states, that no dispute, as to the tithes of a parish, between parties contending to whom they were payable, should deprive the Vicar of the portion which it was just to assign him, for the performance of his spiritual duties. In no other canon, save this, can I trace even the mention of the word.*

* Vide Statutum de *Circumspectè Agatis* pro moderanda prohibitione Regia Editum, 13 Edwardi Primi, Anno Domini, 1285. p. 33.

Before I proceed to examine the documents of our national Canon law, as to the dedication of any portion of Ecclesiastical revenue, to the maintenance of the poor, some preliminary observations are perhaps required. No payment of tithe can be proved in England, till the end of the first four hundred years after Christ. From this period to the eighth century, except in rare instances, the revenues of the Church were derived from voluntary and desultory grants. Endowments were scarcely known. From these resources, an optional appropriation was made. For no synodical or statute law regulated their distribution. Nor is there any satisfactory evidence, which can determine the question, whether even from these grants arbitrarily bestowed, there was any systematic allocation of them, in the mode, which Sir W. Blackstone describes.* But rather the contrary. From this fund, the clergy, at first, received weekly contributions, and afterward mensurnæ divisiones, from whence the clergy had the title of *Fratres sportulantes*. In the fifth century, tenths, but not tithes, were offer-

* See Note G.

ed, and in the seventh, some rare endowments, but no law, as I have said, for the enforcement of tithe.

When the endowments increased, and clergymen were located, generally, over the land, the distinction of parishes, grew into general adoption. But the payment of the minister, was according to the terms of the endowment, not, as yet, in right of parochial tithe. The adoption of this right, became necessary, in consequence of the Monastic bodies, having engrossed a large proportion of the landed property of the church, as well as the appropriation, to themselves, of the rectorial tithes, of a vast number of parishes. The revenues of the church, were used, by them, for the most iniquitous ends; houses were built for their concubines and illegitimate children. And, therefore, a maintenance for the clerical body, independent of them, was devised. They were permitted to retain the properties, of which they were already in possession. But the terms of the endowment, were insisted on. The riches, or rather the sources, from which they were derived, were given, under express stipulations. With these stipulations, they were bound to

comply. Morbid piety, in a dark and ignorant age, was chiefly displayed in bestowing gifts on the clergy, under the obligation of praying for the dead. And alms were considered contributory to the salvation of the soul, until it became a consecrated maxim of the church, that *Eleemosyna defunctis et vivis prodest*.

The reader's attention being attracted to these preliminary observations, he can take a just and more comprehensive view of the synodical authorities, which shall now be submitted to his inspection, as to the point, what, and by whom distributed, was the maintenance of the poor?

The establishment of the parochial right, to tithe, attained general practice in the reign of Henry III. From that period, to the Reformation, the canon law, accurately defines to whom the bestowment of alms, its nature and extent, belonged. It classifies, with exact precision, the duties of the monastic bodies, and of the parochial priest. It does not, in either case, allot, even from the extensive domains of the Religious houses, nor from their plentiful granaries, which were filled from the abundance of rectorial tithe, any quadripartite section of their

revenues. Neither does the canon law enjoin this, in any case, as a duty commanded or implied, on the parochial clergy.

Dr. Doyle, or even the most prejudiced investigator of our national canon law, provided he retain, even the shade of honesty, will be compelled to acknowledge that he cannot, even after the most anxious scrutiny, discover one solitary sentence,—one isolated injunction, that can be tortured into a defence of the appropriation of any ordained part of the tithes, now in possession of the Established Clergy, to the maintenance of the poor. Nor can even special pleading, nor the most refined, nor ingenious sophistry, aid our panting foe in the pursuit, for there is not even the appearance of justice, to support such an hypothesis.

Dr. Doyle claims a fourth of the tithes, upon the grounds that “no statute can be produced to show that the right was taken from the poor.” Did he inquire, whether any act had existed, which it was necessary to repeal, or which could be repealed? He acknowledges, indeed, that no such enactment ever was made. “But it is

common law," he alleges, "because it is supposed to have been enacted." Could the common law right have had force, if ever it had existence, in contravention of the reiterated decisions of the canon law for three hundred years before the Reformation? If the canon was obeyed, what became of the common law? If it was not obeyed, where was the authority of the church, of the king, of the senate, and the people?

Dr. Doyle, in acknowledging the common law right of the parson to the tithes of his parish, escapes from the force of his own confession, by stating, "that after recovering the tithe, the common law charges him to expend it conformably to the usages of the church." But the canons, as we shall see, enforce no such right. These canons are the legislation of his own church; and the acknowledged and registered practice of the clergy of the Roman creed for three hundred years, nullified and abrogated the common law right of the poor to the tithe, if they ever had such a right. On them, and not on the Protestant clergy, who have only imitated, in the administration of the Ecclesiastical reve-

nues committed to their care, their pious predecessors, let all his vengeance fall. The notion of a common law right, being in full and irresistible operation, in despite of a treasury of canons, opposed to it, is but an indifferent compliment to the authority of the Pope in England, from the twelfth to the fifteenth century. What shall we say to the legates from the Roman See, who enjoined no obedience to the common law right. Are all synods and councils, and canons of monarchs, and bishops, and clergy, set at defiance, and annulled, when Dr. Doyle summons from the grave, some imaginary and romantic right of the poor to a fourth of the tithes? Or, rather, has not the conduct of the Roman clergy, and their administration of Church revenues, abolished the prevalence and vitality of any pre-existent custom? The common law right of the parson of the parish to the undiminished tithe, as by the Roman clergy, established, confirmed, and consecrated, by the practice of three hundred years, we imitate and adopt. They are the example we follow, the precedent we quote, and the authority we allege. In obedience to the practice, their

conduct of ecclesiastical funds has directed us to observe, we are most willing to yield. But, if even supposing a common law to have ever existed, shall we be summoned to listen to its revival, when, the Roman clergy, with more than ten times our present revenues, contravened and abolished it? Shall we be directed by Dr. Doyle to a surrender of one-half of our incomes, when he cannot, in attestation of his doctrines, allege one statute, one canon, one fact? And shall he be permitted to sweep away the legislation of his own Church for three hundred years, and the practice, and customs, and laws, of ours for as many more, because a rancorous and burning hatred to the doctrines of the Protestant Church consumes his cooler judgment, and misdirects his acknowledged talents?

Such is the confession of his own lips. In 1825, he swore that to grant Roman Catholic Emancipation, would tend to the security of the Church of England, and that neither he, nor the bishops, nor clergy of his Church, had the least desire to touch one stone in the building of the Establishment. But now, because the Protestant clergy have boldly exposed the errors

of the Romish creed, he forgets his vows, and promises, and oaths. He falsifies history, to justify his imagined wrongs. He abolishes the canons of his Church, to avenge his foes. He rears up, and defends with zeal, if not with truth, a common law right in the poor to the property of his assumed assailants, and thus, unintentionally, in the whirlwind of his rage, brands, with the language of his fiery indignation, the characters of the clergy of his own Church. For the law which he supposes to have existed, they never obeyed, and the usages of his Church, as by him described, they annihilated by a voluminous body of canon laws, in defiance of his vaunted and cherished fourfold division.

In the first place, one feature which the canons prominently develope, is that in every case, in which the bestowment of alms, from ecclesiastical funds, is insisted on, reference is made to the Religious houses only. When charity is spoken of as generally necessary, it is of that universal obligation which imposes on all men, lay and clerical, a similar duty. And it is characterised, by a two-fold division—*charitativa*, and, *ex debito servitutis*. The former, all clergy-

men were bound to exercise—the latter had reference to those solely, to whose guardianship funds had been bequeathed for the poor. As the passage here referred to, gives a general view of the subject under discussion, I shall quote it, before I enter upon a close examination of the canons. In one of the canons of Archbishop Langton, “*De officiis judicis ordinarii*,”* Lyndwood remarks, “*Hospitalitas enim maxime a prælatis et religiosis servanda est. Sic etiam a sacerdotibus et clericis. Hospitalitas quædam est charitativa et pertinet ad officium pietatis. Alia est quæ fit ex debito servitutis. Hospitalitatem primo modo, dictam clerici beneficiati servare, tenentur. Et in hac hospitalitate ubi sic beneficiatus potest omnibus abundare, tunc debet dare omnibus indigentibus. Si autem non possit omnibus abundare, tunc in præferendo aliquos debet servare doctrina Ambrosii. Hospitalitatem, vero secundo modo dictam clerici non tenentur subire, etiam beneficiati, et hoc est verum, nisi in concessione possessionis Ecclesiæ donata aliquid tale fuerit reservatum.*”

* Provinciale. G. Lyndwood, Lib. 1. Tit. 13, p. 67.

This passage alone is sufficient to adjust all contrariety of opinion respecting the quadripartite division. Charity as a general duty, of Prelates, of all the orders of the monastic institutions, and of every grade of the clerical body, is, primarily enjoined. Then charity is divided into two parts—that which is, as it were optional though necessary, and that which is, as a debt incumbent on property. Of the first kind, all beneficed clergy, are obliged to observe, in the proportion of their means—if rich enough to assist the indigent generally, they ought to do so. If their means are limited, they ought to select the persons most needing their attention. But the charity of the second kind, that is, when something is reserved from the gross amount of Ecclesiastical revenues, the clergy though beneficed are not enjoined or bound to comply with, unless some special reservation in the properties committed to their care, exacts this from them, *Ex debito servitutis*. Could these sentences have been written by the most learned canonist of the fifteenth century, if a fourth of the tithes of all beneficed clergy was already reserved for the poor. And here too we are to observe that

even the charity which the beneficed clergy are counselled to observe, has not the sanction of law to enforce it. The observance of it, is suggested only under hortatory authority.

In the Legatine Constitutions of Othobon, among the long catalogue of crimes alleged against those who “non solum unius beneficii sed multorum intrepide curam suscipiunt,” these are recapitulated “quanta mala proveniunt ecclesiæ, namque maculatur honestas, annullatur auctoritas, fides Christi prosternitur, charitas exulat et spes pauperum deperit.

Upon the words “spes pauperum deperit,” Athona refutes the doctrine that “bona ecclesiarum sint bona pauperum”—for as he alleges “Prælati fructuum perceptorum hujusmodi sunt Domini,”—and then he thus explains the nature of this control over the goods of the church, and the dispensation of them, “et habent eorum proprietatem quantum ad fidelem et debitam dispensationem, *sibi et suis* faciendam, non autem voluptuosam : et si qui supersunt, non sunt proprii, sed communes, indigentibus et pauperibus erogandi.

* Consti. D. Othoboni de Institutionibus seu Collationibus. Tit. 29. p. 126.

In the first place, here is no trace of a quadripartite division, but the allocation of ecclesiastical revenues, is regulated by the decision of the prelate. His own wants, and those of his clergy, are first to be protected, and, if (this hypothetical conjunction is a valuable item in our argument) any thing remains, that is to be the portion of the poor.

We shall describe, more precisely, the nature and extent of the eleemosynary assistance, which the Religious Houses were necessitated to dispense to the poor. And then, I shall refer to the specific cases, in which the canons enjoined charitable distribution, on the parochial priest.

In neither case, as we have observed, is this allotment ordained, according to any fixed proportion of their respective properties.

The laws, which regulated the charitable distributions in monasteries, were very precise, and their extent accurately defined. We find them thus described, by Archbishop Langton, in 1222. All luxury in living, and variety of food, having been forbidden,—an interdict unnecessary to enjoin, on their pious inmates,—the canon proceeds, “*omnia autem victualia religiosis appo-*

nenda sine subtractione, tam in conventu quam alibi, ubi reficientur. Et de omnibus apposis, totum residuum sine diminutione aliquâ cedat in eleemosynam per eleemosynarium egentibus simul erogandum. Ita quod nec Abbas, nec Prior nec Eleemosynarius posset contra hoc dispensare.”*

The precision of this requirement appears from some additional information, furnished by Lyndwood, “unde ex hoc apparet, quod de apposis tempore prandii, nihil debet reservari ad cœnam, etiamsi panes aliqui tunc appositi remaneant integri, aliqua etiam fercula remanserunt intacta; nec de cœna in aliud tempus.”†

The description of persons, to whom the superfluities of the abstemious Monks, were given, are then rehearsed, with all due attention to accuracy. But even the selection of one class of persons, in preference to another, extinguishes the notion of a general distribution among the poor. However, if the speculator on the quadripartite controversy, has even a reed, to erect

* Consti. Provin. in concilio. Oxon. D. Step. Lang. Cantua. Ar. p. 6.

† Lyndwood Lib. iii. Tit. 19. p. 209.

his sophistries upon, the following words of our learned canonist, will immediately show how fragile was this hope. The distribution was made "*Egentibus ad corporis sustentationem, maxime his qui suis manibus laborare non possunt, nam qui laborare potest, si se immisceat eleemosynæ ridigitur in servitutem.*" The Eleemosynarius is controlled in the distribution, by nine wholesome laws. Yet it so happens, that the exercise of every one of them annihilates the sophistry of any supposed indiscriminate and general distribution; or, that the charitable bequests of the righteous Monks were ever intended, as a maintenance of the poor. He was bound, for instance, to consider the faith of the applicant, which excludes the notion of an abstract right in the pauper. We cannot pause to remark, that the not keeping faith with a heretic, was piously extended to the starvation of his body. The Eleemosynarius was obliged to respect the claims of a captive, which necessarily might exclude the extension of alms to another, however miserable his poverty, who was not a captive. Those incarcerated for debt demanded his special care, which implies a limi-

tation to particular objects, and restricts the claim of a general distribution. He had the right also, and a very copious privilege it was, to prefer the claims of his own kindred to any other, "*propinquos sanguinis sui aliis præferat.*" However, it is but just to observe, that this rule was guarded by a most conservative caution, "*ut eos pascat propter carnis sustentationem, non autem ditet propter carnalem amorem.*"

We shall, now, consider the obligations as to eleemosynary aid, to which the parochial clergy were bound, by the canon law of England. In the constitutions of Archbishop Peccham,* is this canon.

Statuimus ut Rectores, qui in ecclesiis suis non faciunt resindentiam corporalem, nec habent vicarios, per œconomos suos hospitalitatis gratiam exhibeant, juxta quod sufficiant ecclesiæ facultates, adeo ut saltem parochianorum pauperum necessitati extremæ subveniatur. Et ut qui ibidem transeunt et prædicant verbum dei, neces-

* *Constitutiones Fratris Johannis Peccham Cæntuariensis Archiepiscopi apud Lambeth Editæ Anno Domini 1281, Regni Regis Edwardi Primi. 9. Martino secundo Alias. quarto, Pontifice Maximo, p. 30.*

saria recipiant corpori alimenta, ne ecclesiæ, ipsorum inopiæ violentiâ, a predicantibus merito deserantur.

These two duties are enjoined thus generally. They are not enforced by any authority, separating from the amount of the Rector's Ecclesiastical revenues, a fixed and destined sum. For the distribution to the poor, scriptural warrant is alleged, but no law, canon, or civil, or common, is specified. The introductory words before statuimus, are "*Præterea cum sacro testante eloquio, pastores sibi greges creditos pascere teneantur, ac os bovis tritulantis non debeat alligari.*" If even these passages of scripture were correctly applied, which they are not, they would carry with them, no injunction as to the dedication of a fourth of the tithe to the poor. One of them refers to the spiritual duties of the pastor to his flock, and the other, to the obligation of the flock to provide a temporal maintenance for him. The scriptural authority, namely, that the labourer is worthy of his hire, alleged for the rector providing for itinerant pastors, is necessarily vague in appropriating any regulated sum for these duties. So that all that the canon

enjoins, is hospitality to the poor, and the missionary preacher of the gospel. While the warranty of revelation is naturally distorted by those whose successors are emulous to perpetuate the hereditary odium of undervaluing the written word of God.

But more important considerations are connected with this canon. Two duties are enforced in it. But on whom? On rectors who did not reside on their benefices. If the rector did not reside, the poor were to be relieved. If he did not supply a vicar, the missionary was to be temporarily supported. Therefore, there is not, even here, more than an implication that if the rector did reside, he was bound to the performance of the duties, which are here enjoined on the rector, who did not reside. It might be assumed that the requirement of a distribution to the poor, by an absent rector, was a punishment for his absence, and that his residence released him from the implied injunction. But, allow the largest interpretation to the canon, and that rectors absent and resident, were under the obligation of a similar responsibility to the poor, to what does it amount? To

a quadripartite division of their tithes? No such thing. For the law here defines the extent, or rather the species of the duty, "*adeo ut saltem parochianorum pauperum necessitati extremæ subveniatur.*" How much this may require, we are not informed in the canon itself. The absence of this precise knowledge, is an argument opposed to a definite division. The portion to be allotted is optional. The *œconomus* was to be the dispenser only of the part distributed "*per œconomos suos Hospitalitatis gratiam exhibeant.*" This rule, as we shall just now observe, was very different from that by which the allotment of the ecclesiastical goods of the religious houses, was regulated by the bishop.

But a word more on this point. The nature of the hospitality here enjoined, regards not all the poor parishioners of the parish, which shows there was no general law authorizing, even in the case of an absentee rector, a disbursement of any part of his tithes, to the poor. For even the phrase, "poor parishioner," was limited to him, who was in extreme necessity. What quality of distress this was, Roman Catholic

commentators, who lived centuries before the Reformation, inform us. For instance, Lyndwood thus describes, first, the nature of this duty, as to the person, who performs it; and secondly, the character of the person to whom it is to be dispensed. “*Tenetur itaque quilibet, maxime Vir Ecclesiasticus, necessitatem habenti subvenire, ex charitate.*” Here is a confirmation of the doctrine, as already explained, of charity as generally obligatory. And on the parochial minister, no farther than his conduct should serve to others as an example, is this duty more binding than it is on all men. He, from his ecclesiastical goods, all others, from their various properties, are bound to the fulfilment of the same divine principle. His obligations are more accurately specified, but they are not more imperative by law. They amount to this,* “*Sed quia in omni necessitate*

* The entire note deserves transcription. Ex hac conjunctione adversativa (*saltem*) apparet quòd non intendit Legislator eos, de quibus hic loquitur, arctare ad omnem hospitalitatem, sed ad congruentem, et *ad minus* eam. Non dicit omnium parochianorum. Nec intendit ultimatè de omni paupere parochiano, sed de qui indiget necessitate extremâ.—Lyndwood Provin. De Clericis non Resid. Lib. iii. Tit. 4. p. 133.

non potest quis alteri subvenire, ideo tenetur, saltem in necessitate extrema succurrere.” Here we must observe, that the duty is argued on general grounds. The absent rector, by this law, is held responsible for the performance of certain duties, to which the representative of any property is equally bound. On the supposition that the resident rector is under similar obligations, the extent of any compulsory assessment is limited to giving assistance to those in extreme want. And that no defined proportion of the ecclesiastical revenues of rectors, whether absent or resident, was assigned for this purpose, these words fully evince, “*talis sustentatio fiat de eo, quod alicui deductis necessariis, pro sustentatione propriâ et suorum, ac onerum sibi incumbentium, superest.*” Thus it is evident, that the parochial minister was his own legislator, and his conscience was the law that regulated the appropriation of any part of his ecclesiastical property, to the poor.

Thomas Aquinas* defines to what class of misery the phrase “*extrema necessitas*” refers,

* Quart. Dist. 15.

quod tunc intelligendus est casus extremæ necessitatis, quando apparent signa probabilia extremæ necessitatis futuræ, nisi ei subveniatur. Non enim expectanda est ultima necessitas, qui tunc forte non posset juvari, natura *jam fame vel siti consumpta.*" These nice distinctions in doling out charity, while we sneer at their sophistry and pagan heartlessness, enable us fully to conclude, that the poor were not maintained from the property of the Church. If they had, ingenuity would not thus be tortured for a defence for abrogating some of the grand capital letters of Christian doctrine. When Aquinas wrote this passage, about the year 1250, could any settled ordinance have had existence for the maintenance of the poor? Could this be so, when the Angelical doctor thus, in the scales of nicely balanced parsimony, assigns a voluntary contribution, so stingily meted, that the dying alone partook of it.

But we must not taint the memory of this sainted Doctor by an unjust aspersion. His charities were distributed in such accurately ordered time, that he anticipated the moment when the patient would have perished from hun-

ger and thirst. How charitable the sentiment ! How profound the wisdom ! yet these are the men* and this their law and practice, which the clergy of the Protestant Church of England, are called upon by Dr. Doyle, to imitate and adopt.

In the year 1342, John Stratford, being Archbishop of Canterbury, a Provincial synod was held in London, one of the canons of that synod I shall here insert.†

De Eleemosynis faciendis in Parochiis Ecclesiarum appropriatarum.

“ In Decimis, et cæteris Ecclesiarum rebus dispensandis, cum viris ecclesiasticis permissa

* Another of these charitable Doctors of the civil law, thus nicely poises the duty of parochial ministers “ Sed quid si plures sint egentes, *cui* vel quibus debet citius subvenire ? Dic, aut, unus est magis egens quam alius, et *illi est citius succurrendum*. Aut, *uterque* æqualiter eget, et tunc, si sufficit succurrere ambobus (how much to be lamented, that there is no latin dual number) debet utrique subvenire. SI VERO NON SUFFICIAT, GRATIFICATIONI LOCUS EST.” Henr. de Bowycō. de pæni. et remis. cap. cum ex eo. di. 3. ver.

† Constitutiones Provinci. Johannis Statford, Cantua. Archie. editæ Londini, in conciliis provinci. x. die mensis Ooctobris, Anno Domini 1342.

sit facultas, hujusmodi rerum compendio pauperes
 ne defraudenter : sed *Religiosi* nostræ Provinciæ
 appropriatas obtinentes sibi ecclesias, fructus,
 redditus, et proventus earum sic suis cupidè ni-
 tuntur usibus applicare, quòd dispensandi Dei
 misericordiam Parochianis sic appropriatarum Ec-
 clesiarum regeneratis filiis, quantenus indigenti-
 bus, quibus, tanquam suis domesticis naturalibus
 instructis exemplo, quam extraneis, plus tenen-
 tur, in nullo exhibent, nec inter eos exercere
 curant quævis opera Charitatis. Unde sic nimis
 agentes avarè, Decimarum et Ecclesiasticorum
 Jurium debitores, nedum indevotos efficiunt :
 sed eorum perversos invasores, et consumptores,
 turbatoresque nefandos, occasionaliter instituunt,
 in suarum propriarum, et ipsorum grande peri-
 culum Animarum, et scandalum plurimorum.
 Unde Sacri hujus approbatione Concilii, Statui-
 mus, quòd Religiosi prædicti, Beneficia appro-
 priata obtinentes Ecclesiastica, secundum Bene-
 ficiorum hujusmodi facultates, annis singulis,
 pauperibus Parochianis, beneficiorum hujusmodi
 certam Eleemosynæ quantitatem episcoporum
 locorum moderandam *arbitrio*, per ipsos Episco-
 pos distribuere compellantur, sub pœna Seques-

trationis fructuum, et proventuum Beneficiorum hujusmodi, donec in præmissis paruerint competenter."

If any pen, but the infallible authority of a Roman Cotholic Archbishop, had described the avarice and guilt of those religious monks, we should be told that bigotry alone pourtrayed it. The canon complains of, and condemns, the pernicious avarice of the monks, who had heaped together the revenues of a great number of Rectories; and instead of applying any portion of them to the use of the poor, had profligately squandered them on their own debaucheries. "In nullo exhibent, nec inter eos exercere curant, quævis opera charitatis." To remedy these evils, this canon was enacted, and therefore it was decreed, that a certain portion of their revenues derived from these appropriate Rectories, should be devoted to the poor. The portion to be assigned was to be regulated arbitrio episcoporum, and sequestration of the produce of these livings was the punishment for disobedience. Let it be remembered that the injunctions in this canon respecting an allotment of ecclesiastical property to the poor, apper-

tained solely and exclusively to the Religious Houses, and not to the parochial Priest, “statuimus, quod religiosi prædicti, beneficia appropriata obtinentes ecclesiastica, pauperibus parochianis eleemosynam distribuere compelluntur.”

In the first place, even in the present instance of aggravated guilt in the misapplication of the proceeds of these rectories, and when a dedication of a portion of them, may be assumed as a punitive retribution, no fixed deduction from the amount of tithes is specified, much less any quadripartite partition. If such a division had any legal sanction, or was discoverable in practice, would not the law have been alleged, and the infraction of the practice arrayed against these pious delinquents. Instead thereof, even in the visitation of archiepiscopal authority, and in the establishment of a power to controul these misdeeds, the assignment of the portion of tithes to the poor, is to be regulated by the sole unrestricted mandate of the bishop. If, therefore, no authority in law, and no example in practice, could be brought to bear upon a case, wherein the persons possessed of tithes, not only did not reside in one parish, from whom they derived

them, but whose avarice occasioned many parishes to be left in the same deserted situation: if the pernicious consequences of this absence, were heightened by the gross misapplication of the funds derived from them—and if, notwithstanding the necessity of applying the utmost rigor of the law, to enforce a restoration to the poor, thus deprived, of whatever legally was their right, yet that no fourth part of Church revenues was allotted to them, but on the contrary, a new power was invented, requiring the sanction of an express canon, to enforce it; by what rhetorical delusion, or inconclusive reasoning does Dr. Doyle arrive at the deduction, that still the parochial minister, who resided on his benefice, and possessed but one parish, was bound to observe a rule, from which they who were possessed of many, and resided on none of them, were exempted. This is a happy instance of the argument *a fortiori*, yet, perfectly in harmony with the usual no-sense declamation of the enemies of the church.

The difference to which I have already adverted between the duties as to the poor, incumbent on non-resident Rectors, and the members

of the Religious Houses, is thus described by Lyndwood, “ In hoc differunt Religiosi habentes Ecclesias appropriatas ab aliis Rectoribus qui non resident.” Mark the distinction is only drawn between the Religious orders, and the Rectors who did not reside. An implication that to the Rectors who did reside, this duty in the same extent, did not apply. “ Nam Rectores *hujusmodi* tenentur ad *hospitalitatem*, in loco Beneficii, maxime pro pauperibus parochianis suis in extrema necessitate constitutis. Illi autem Religiosi non tenentur ad *hospitalitatem* *hujusmodi*, sed ad Eleemosynam in *pecunia largienda*, ut hic patet.” This appears satisfactorily and completely to clear the question, as to any pecuniary distribution from the Rectors of Benefices not appropriate, and particularly, from such as have resident incumbents.

The ancient law and practice as to the right in the poor to any Ecclesiastical property, are more fully developed, by the consideration of the remedy by which a compulsory payment of their legal claim, could be secured. For if the right existed, doubtless the means of asserting and vindicating it, also existed. On the question

“Nunquid factâ moderatione hujus summæ (the portion which the Bishop had the power of assigning from the rectories of the Religious Houses) per Episcopum, oriatur ex hoc, istis pauperibus aliqua actio?” Lyndwood decisively answers “VIDETUR QUOD NON.” And his reasoning in vindication of his opinion is still more satisfactory “Quia cum personæ istorum pauperum sint incertæ, non potest constare, quibus eorum applicetur obligatio, quæ est mater actionis personalis, qualis esset ista.” Now surely if a settled dividend of Church property had been the right of the poor, the œconomus would have received it, and distributed it; and if he did not receive it, from those, who ought to pay it, he could have enforced it by law, otherwise the giving it, was optional, which annihilates the notion of property. But no such power to enforce it, existed, for no law sanctioned the power.

A case is then supposed by the learned canonist. “Puto tamen, quod si in Parochia esset Collegium Pauperum, quod tunc eis, tanquam personæ, satis certa daretur actio.” So that the legal right could only be enforced, when there

was a Collegium Pauperum, and therefore in ninety nine parishes out of a hundred, no partition of tithes to the poor could be enforced. And even this stands on the dubious authority of a *Puto tamen*. And distinctly to mark that no right lay to the poor in tithes, except where there was an endowment, he observes “Si non sit Collegium, tunc sicut alias favore pietatis, valet *relictum* pauperibus, licet incertis personis.”

Now be it observed that all this reasoning and learning of the ancient canonists, are not directed to the general right of the poor to a portion of the tithes, but these clouds of uncertainty and doubt are suspended over the ecclesiastical properties of the monasteries, to whose devout inmates, pre-eminently, the protection of the poor was committed. And every exemption which the imperfection or inadequacy of the law extended to them, threw a tenfold more ample shield over the properties of the Resident Rectors.

If any remnant of the fourfold division could be traced, at the period when the canon of Archbishop Stratford was enacted in 1342, would not the Bishop to whom was consigned the authority of appropriating a portion of the monastic

revenues to the poor, have in this instance of aggravated dereliction of sacred responsibility, recurred to it? Could the existence of such an appropriation as a fourth of the tithes of parochial ministers have been known, when here it is not only, not mentioned and enforced, but the canonists, are even in doubt, what portion, it would be equitable for the bishop to separate from the monastic funds.

And when we consider the accumulated guilt and enormous debauchery; the profanation of the most sacred trusts, and the notorious and shameless vices, which even the homage, which ordinary profligates pay to decency and the world, did not conceal; when we remember that this is the recorded history of the monks, and recorded too, by Roman Catholic authorities, and by the authors and publishers of the canon law of England, which law, in numerous instances, branded them with all this foul catalogue of sin, in order that punishment might overtake them in their transgressions; when we place these facts before us, and then turn to the canon, which decreed that *Episcoporum arbitrio*, a portion of this wickedly acquired wealth, should be devoted to

the poor, can we suppose that the utmost extremity of the law would not have been marshalled into operative energy, even supposing, it had for some time lain dormant, in order that the largest substruction that it was possible to make from the revenues of these sacerdotal debauchees, might diminish their power, (for their inclination it was impossible to control) to indulge in all their carnal wickedness, and filthy licentiousness.

But in order to strengthen this argument, it may be said, that I have magnified these enormities. The canon, which now we have examined, describes their avarice to be so boundless, that into the possession of the Rectories thus accumulated for the indulgence of their sins, “*perversos invasores et consumptores, turbatoresque, instituunt.*” But in a synod of a council held when Edmund de Abendonia was Archbishop of Canterbury in the year 1234, this notable evidence of the unstained sanctity of the clergy appears “*Concubinæ sacerdotum moveantur ab Archidiacono, et præcipue a sacerdotibus in quorum parochia morantur, ut vel matrimonium contrahant* (even the infallible church consented to abrogate the law of celibacy, to save the priests

from shame,) *vel claustrum ingrediantur*; VEL SICUT PUBLICE *pecaverunt, publice agant pœnitentiam*. Their punishment, however, was greater than they could bear. “*Quod si nullum istorum per monitionem reduci possint, interdicto eis, primo, pacis osculo,*” &c.*

At an earlier period, we discover the pious uses to which the property of the Church was devoted. “*Quonam plures, ut non solum filiis et nepotibus suis, verum etiam concubinis, Patriminum Jesu Christi dent, domos in laico fundo ædificare præsumunt, ad quas, Ecclesiasticos proventus deportantes, dum proximis in sanguine bona Ecclesiastica congregant, iram dei, ad damnationem perpetuam thesaurisant.*” This canon was enacted in 1222, when Stephen Langton was Archbishop of Canterbury.

Here is evidence† sufficient to establish, that if

* Consti Provin. S. Edmundi Cantuariensis Archie. qui consecratus est A. D. 1234, tempore Henrici 3. Angliæ Regis Gregorio. 9. sedente Papa, p. 11.

† Consti. Provin. in Oxon. p. 8. See also, for further information, a few more instances selected from many, Consti. De Reading, 1279, p. 24. De concubinariis. Consti. Venerabilis Henrici Chicheley, Cantua. Archie. editæ apud Otteford, A. D. 1415, p. 69. and Consti D. Othoboni. p. 126. edit. Oxoniæ, 1679.

the extremity of the law might equitably be applied in any case, to an enforcement of the fourth of the tithes to the poor, the conduct of the Monks, and the immense mass of treasure they had appropriated to themselves, would have justified such a measure. But what is more to our purpose, the law would have been exerted in its most rigorous injunctions. For in numerous councils, it appears that the king, under whose auspices they were convened, and the Pope, whose legatine commissions into England, were special interferences to enforce observance of the canon law, and a more systematic devotion to ecclesiastical discipline; as well as the Archbishops and Bishops of the Church, were each, and all, most solicitous to restrain the wanton debauchery of the religious orders, and to vindicate the character of the nation, and the sacred name of religion, by an uncompromising enforcement of every law that could diminish the growing power of the Monks, and enormous accumulation of monastic wealth. Yet in no instance, can one canon law be found, since the institution of the parochial right to tithe in 1200, in which, even the religious orders were required to fulfil

the conditions of this supposed appropriation of a fourth of their revenues to the poor. Doubtless, the power of these monastic bodies was great, and in many instances, sufficient to control both pope and king, the parliament and the law. But it is just as true, that the most vigorous efforts were made to apply every ordinance, legal and sacred, to effectuate a curtailment of their authority, and their riches. Yet, no attempt, was ever hazarded, to compel them, on whom especially, the obligation of maintaining the poor, was incumbent, to apply, for this end, any regulated portion of their revenues. The law, pressed to its highest power, extended no farther than the decree of a council, that, according to the arbitrement of the bishop, some division of their property should be thus devoted. But, this portion was undetermined, though the law itself was enacted for the benefit of the poor, and for the punishment of those who had neglected them.

If these statements of the duties of the religious orders, to the poor, be true in history, in law, and in fact, and if they be not so, let Dr. Doyle refute them, where will, even his inven-

tion forge any defence for the alleged dedication of a fourth of the tithe of parochial ministers, to the same purpose.

This voluminous recapitulation, however tedious to the reader, and laborious and uninteresting to the author, was necessarily produced, to refute the false assumptions of Dr. Doyle, who gladly relies upon any speculative theory, or plausible hypothesis, provided the operation of the one, or the adoption of the other, can facilitate the overthrow, or even the dismemberment, of the Church of England.

Beside the proofs already alleged in defence of the doctrine, that no deduction was ever made, in all the ancient history of the Church of England, of one-fourth of the tithe to the poor, and of the same proportion for the reparation of the church, since the institution of parochial right, we have other and abundant evidence to substantiate our position. And, in selecting authorities, to establish this argument, I shall prefer that one, in the first instance, upon whom our adversaries rely, and whom they confidently, but ignorantly, quote, in attestation of

their ill-grounded speculations. I mean, Sir William Blackstone.*

“ We are next to consider the persons to whom tithes are due. And upon their first introduction, though every man was obliged to pay tithes in general, yet he might give them to what priest he pleased, which were called arbitrary consecrations of tithes; or he might pay them into the hands of the bishop, who distributed among his diocesan clergy, the revenues of the church, which were then in common. But when dioceses were divided into parishes, *the tithes of each parish were allotted to its own particular minister*; first, by common consent, or the appointments of lords of manors, and afterwards by the written law of the land.

In process of years, the income of the poor laborious parish Priests being scandalously reduced by those arbitrary consecrations of tithes, it was remedied by Pope Innocent the Third, about the year 1200, in a decretal epistle, sent to the Archbishop of Canterbury, and dated

* Commentaries, vol. 2. p. 26.—See the preceding pages, 12 to 33.

from the Palace of the Lateran. This letter of Pope Innocent, to the Archbishop *enjoined the payment of tithes to the parsons of the respective parishes where every man inhabited, agreeable to what was afterwards directed by the same Pope in other countries.* It afterwards became *lex terræ*."

The parochial right to tithes as here explained, is abridged from the account given by Selden, who has recorded instances of cases in which the tithes were appropriated, after the year 1200, to the Parish Priest, as well as, instances of suits for tithe after this period, when the only title adduced in court to establish the minister's right to them was that the land on which they grew, lay "*infra limites parochiæ suæ*."* Among the former class of proofs he states that Pope Alexander the Third directed the Archbishop of York, to build a church in that town and institute an incumbent to it, "*that he might have to his own use, all ecclesiastique profits encreasing in the limits of the same town.*" Of the latter class of proofs, he cites the following: "upon delegation made by Pope

* Selden on tithes. c. ix. p. 267 and c. xi. p. 363.

Innocent the Fourth, in 49 Henry 3. to the Priors of S. Trinity and S. Bartholomew in London, and the Archdeacon of Westminster, for the deciding of a controversie 'twixt the Abbess and Nuns of Chartris of Ely, and Robert Passelew Archdeacon of Lewes, about some tithes in the possession of the Nunnery in Barington, it appears that in Passelew's libel, no other title is made, but that the Land lies *infra limites Parochiæ suæ de Barenton, unde petit dictam Abbatissam compelli integre ad solutionem dictarum Decimarum cum damnis et interesse, &c.* and some others like are of that time according to the law that to this day continues, as may especially be found in the books of Pipewell and Ossney."*

* M. S. in Bibli. Cottoniana. Selden.

CHAPTER V.

*A further Examination of Dr. Doyle's assertion,
that the Poor have a common law right to a fourth
of the Tithes of the Church of England.*

DR. DOYLE'S last refuge in defence of a quadripartite, or tripartite, division of tithe, is thus expressed: "I acknowledge, and believe, and know, that the parson has a common law right to recover the tithes; but, I say, that after recovering it, the common law obliges him to expend it conformably to the the usages of the Church."

I freely admit that the establishment, by fair proof from history, and the usages of the Church, of this asserted common law right, would, at least, furnish some plausible apology for Dr. Doyle's contemptuous disregard of the array of his own canons, which I have marshalled against his favorite supposition.

In the first place, it is not yet in proof, that, after the Church had obtained property, any legal fourfold division of it was made. In England it was never practised after the maintenance of the clergy had been provided for, from a settled revenue. Selden has declared, "that the making a common treasury in every diocese, was discontinued about five hundred years after Christ, and the chaplain or incumbent received now the profits that rose out of Christian devotion." If the ecclesiastical law of England, as is acknowledged, was adopted and used in Ireland, the custom was necessarily assimilated as to the division of tithe. The existence of the *Quarta pars Episcopalis*, upon which Dr. Doyle, upon the authority of Ware, so largely insists, in reality possesses no weight to strengthen his hypothesis. For, though it remains to this day in the diocese of Clonfert, and could be traced, a few years since, in that of Tuam, yet it does not, and cannot necessarily follow, that, after the Church had obtained an inheritance of her own, such a fourfold partition of her property, as speculatists now advocate, was, therefore, generally observed. For, when the

practice of a common treasury in every diocese had ceased, by reason of the location of parochial ministers, the canons, nevertheless, still reserved the quarta pars to the bishop. The traces of it, therefore, now discoverable, are but the ancient relics of primitive practice, nor hence can it be inferred, that, because the bishop's part, in a few instances, continued in obedience to the canon that reserved it; the right of the poor to a fourth of the tithes, still remains in equal force. But precisely the contrary is the just consequence from the fact of the existence of the Quarta pars Episcopalis. Perhaps no stronger argument could be alleged, in opposition to this asserted right of the poor. "The chaplain or incumbent received now (when the diocesan treasury was discontinued) the profits that rose out of Christian devotion, *the canons, nevertheless, saving the fourth part* to the bishops." The canon, therefore, which sanctioned the continuance of the episcopal right, annihilated by the very selection of one claimant out of four, any right in the other parties, to a similar protection.

But, to cede every point that may be inferred from the admission, that all Dr. Doyle's deductions, respecting the primitive distribution of tithe, are valid and correct, impairs not, in the least, the foundation on which I have argued this question. If, even from the introduction of Christianity into these islands to the year five hundred, when voluntary contributions gradually died away, and the necessities of the Church were supplied from the resources of fixed ecclesiastical property; if we extend the admission that the fourfold division was made, with no less precision from the inheritance of the Church, than from the arbitrary offerings of the pious, even to the commencement of the thirteenth century, it cannot be assumed, that a common law right for the perpetuation of a like partition of Church property ought still to continue, unless Dr. Doyle can prove that no interruption to the prevalence of that right occurred from the thirteenth century to the Reformation. If three hundred years, not to speak of the period of our secession from the Church of Rome, have annihilated the observance of an ancient custom, it must follow, that the practice which

abrogated the ancient usage, has now become, and is invested with the venerable sanction of, a common law right.

We have already observed that the Kings of England, supported by the authority of her nobility, abjured the whole body of the imperial canon law. But those parts of it, which, by special enactments, were made applicable to England, had, therefore, all the force of statute law. For the mere act of abjuration of the whole of the foreign ecclesiastical legislation, contributed to bestow a distinguished and forcible adoption upon the detached pieces of it, which were sanctioned by the heads of the Church of England, in the presence of their king. Thus the existence in the English canon law of numerous authorities, overturning Dr. Doyle's assumed hypothesis of a fourfold division of tithes in the Church, invalidates his supposition of a common law right in favor of such a disbursement. But, besides, the English common law, from the singular circumstances attending its enactment, becomes invested with the vitality of statute law. Can even Dr. Doyle suppose that the kings and nobles, who abjured

the whole imperial law, would yet permit the adoption and registration of a part of it, in marked opposition to statute law, or to customs prevailing in England? Or, rather, was not the canon law of England, at least silently approved, by the fact of no parliamentary decisions in resistance to it? And, are not the clergy of the Protestant Church thus defended with the panoply of the Roman Catholic canon law of England, to which the statute law promulgates no dissonant enactment? Do not both thus hallow and confirm the common law right in favor of present practice, which, unless our ancestors were even less wise than our modern Illuminati will acknowledge, could not have been opposed to the open and manifest authority of British ecclesiastical law, and to the silent, but no less confirmatory obligations of the statute law.

If this reasoning is correct, the common law right is not, as Dr. Doyle has argued, in favor of, but opposed to, any fixed separation of ecclesiastical property. This common law right, the canons, those dear familiar friends of Dr. Doyle, which the clergy of the Established Church cannot be expected to have explored,

or understood, confirm and have perpetuated its observance.

But we shall for a moment accommodate the argument to the romantic speculations of Dr. Doyle. We shall admit that the pious attention of the clergy of ancient days was strictly devoted to the eleemosynary distribution of ecclesiastical funds, and that with undeviating charity, they continued their hallowed practice for many centuries. But I cannot allow my indulgence to extend further. If even the fourfold division of tithes existed, it ceased from the year when the parochial right came into full operation. Selden says, it was not the universal practice of England till the year 1226. In eight years after this, that is in 1234, we shall now prove that the entire tithes of each parish, belonged to the parochial minister, without any subtraction, either for the poor, or the fabric of the church, except in the two cases, of a previous arbitrary consecration or infeudation of them. Further, that the canon which establishes this right, then became and ever since hath been, the unrepealed law of the land. So that the argument of the common law right which Dr. Doyle has arrayed

against the clergy of the Protestant Church, and the assertion that we have no title earlier than the Reformation for withholding the two parts of tithe dedicated to the use of the poor and the church, have as little foundation to rest upon as the other surmises of our ignorant antiquarians and speculatists.

The period during which tithes, as, they are now claimed and held by the Protestant clergy, were possessed by the Roman Catholic clergy, numbers nearly the same sum of years. And therefore instead of being contented with the protection of the law from the time of the Reformation, we boldly appeal to that, by which the Roman clergy were protected in their right to them, for three hundred years before Henry VIII. seceded from the Italian Church. We are content to be subject to the same liabilities as the national clergy were in 1226. But we also claim to be exempt from burdens, to which they were never bound.

In the year 1234, Edmund De Abendoniam*

* *Constitutiones Provincialis Sancti Edmundi Cantuariensis. Archiepiscopi, qui consecratus est A. D. 1234 tempore Henrici 3. Angliæ Regis. p. 13.*

as Archbishop of Canterbury enacted the following canon, which now for six hundred years, forms a part of the canon law of England. It is found among the statutes "*De Consuetudine*," to which there is the following preface,† "*Præcipimus futuris temporibus inviolabiliter observari, mandantes nostris chrorepiscopis et suffraganeis universis, et ipsas constitutiones per se vel per alios, (ut jus exigit, publicent et faciant publicari ac in publicam notionem deduci ad utilitatem communem, laudem et gloriam nominis Jesu Christi.*"

The canon they recommend, is, as follows, "*Nullus Rector, Decimas Ecclesiæ suæ nondum perceptas vendere potest ante Annunciationem Beatæ Mariæ Virginis, a quo die fructus de consuetudine cedere debent ad ipsorum Rectorum, si ante fructuum hujusmodi perceptionem decesserit, legata vel debita persolvenda.*"

The prohibition not to sell his tithes before a particular day, clearly gives to the Rector, the power to do so after that day. No limitation is here fixed, as to his propriety in the whole, and the power of disposing of them. If they

† Lyndwood, Lib. Tit. 3. p. 18.

had not been his, all and every part of them, would his authority to dispose of them, have thus extended, without deduction to the entire of them? If two parts of them, had been the property of others, equally as the other half was his own, would the dominion over all the parts have been vested in him? If he died, after that day, yet before he had received them, the canon regulates the destination of them. If one half of them had been by law devoted to the poor, and the fabric of the church, would the canon have applied them and ordained their appropriation, to particular objects, none of which are either, the poor or the repairs of the church? He could bequeath them by will. Could he have done this, if he had no title to dispose of them? If he could thus dispose of them, could they have been another's? They were to be devoted, in case of his death, to the payment of his debts. If they were not his property, how could they become the property of his debtors?

The canonists, upon this law, are equally explicit with the law itself, in confirming it. Their amplification of it, explaining the general custom, renders the evidence incontrovertible,

that tithes, without deduction, were the sole property of the parochial priest.

Lyndwood remarks upon this canon, “*Ex hoc patet, quod beneficiatus testari potest de fructibus Ecclesiæ, et hoc verum de consuetudine, etiam de fructibus nondum perceptis ut hic. Unde a fortiori valet consuetudo ut possit testari de perceptis. Est consuetudo per Angliam quodam modo generalis, ut videlicet Beneficiatus testetur de mobilibus acquisitis ex fructibus ecclesiæ saltem perceptis, et quandoque non perceptis ut hic. Sed quæro quid si rector vel hujusmodi Beneficiatus decedat intestatus, et non desponat de fructibus. Dic quod de jure communi ecclesia in eis succedat? De consuetudine tamen posset esse, quod per episcopum vel alium, ad quem pertineret bona testatorum tueri, deberent distribui ad decedentis debita solvenda, præsertim in casu hujus consuetudinis, quæ viventi post annuntiationem dat, non solum dispositionem fructuum, sed ipsos fructus: dicit namque hic litera, quod fructus a die Annuntiationis cedunt Rectori, ad legata vel debita solvenda. Sed quid si nulla legata reliquit nec testatus est, nec sunt ejus debita aliqua, an fructus hujusmodi*

pertinebunt ad dispositionem illorum, qui de aliis ejus bonis administrando disponunt, vel pertinebunt ad ecclesiam?" Lyndwood then canvasses many opinions, and ends thus, "Ex prædictis patet, quod licet nulla sint decedentis legata vel debita, et sic cesset causa consuetudinis, non tantum cessabit ejus effectus, sed quod fructus ipsi abunde disponantur pro salute animæ suæ per eos, qui alia bona administrabant et non pertinebunt ad Ecclesiam vel ejus successorem."

Hence, it is evident, that after a certain day, the tithes, whether severed or not, were the property of the rector. If he died, they were to be applied to the payment of his debts, and of legacies, if he made a will. If he died intestate, even in such a case, the tithes of his parish were classed with his other property. If he left no legacies, or debts, even then, the church, or his successor, had no claim to them. So strictly were they considered his property, that they were still applied, though he was dead, according to the superstitions practised of praying for the souls of the departed, to his use, "disponantur pro salute animæ suæ."

I have now shown what the canon law of

England and Ireland, respecting tithes, was, from the year 1200, when the parochial right, to them, was reduced to general observation, to the fifteenth century. And here, it may not be unprofitable to suggest to the reader, the variety, rather the universality of the things tithed. From the Reformation to the present time, the same right to tithe has existed. It may be necessary, however, to adduce one authority, from many which are at hand, to prove that the clergy of the Reformed Church became the possessors of the tithes, under the same conditions as, and bound by no other responsibilities than, the clergy who had preceded them. The evidence to which I am going to refer, not only will exhibit the obligations on the clergy, who then became possessed of the Ecclesiastical property of the nation, but also retrospectively declares the conditions under which it had been enjoyed, by the Roman Catholic Priesthood.

When Henry VIII. released these kingdoms, from the thraldom of the Pope, he appropriated to his own use, by an iniquitous law,* what the

* 26 Henry VIII. c. 3.

Pope had as iniquitously appropriated to himself—the first fruits of all Ecclesiastical benefices. The Lord Chancellor was empowered to direct into every diocese in England and Wales, and by a subsequent statute, into Ireland, several commissions, in the king's name, to the Archbishops and Bishops of every diocese, or to any other, whom the king should name. These commissioners were authorized to make all necessary enquiries, in order to ascertain the most precise knowledge, to guide them as to the amount they should appropriate to be paid in the yearly rent, or pension, which was to be rated or levied from all manors, lands, tenements, and other properties, belonging to all Ecclesiastical persons. This rent, or pension, was not to be regulated according to the gross value of every bishoprick, or benefice, or other Ecclesiastical property, but according to the net value, after the deduction of every item, which their possessors might have to pay. These several expenses, to which the possessors of church property were liable, are thus enumerated.

“Every such commission shall contain a clause that the said commissioners, or three of them, at

the least, shall deduct and allow, in the making and rating of the said yearly values of the premises, these deductions following and none other—that is to say, the rents resolute, to the chief lords, and all other annual and perpetual rents and charges, which any spiritual person or persons, been bounden yearly to pay to any person or persons, to their heirs and successors for ever, *or to give, yearly, in alms*, BY REASON OF ANY FOUNDATION OR ORDINANCE, and all fees for stewards, receivers, bailiffs, and auditors, and synods, and proxies.” The Act then states, that the commissioners were to certify, within a given time, as well the whole and entire value, as the deductions aforesaid, and the first fruits payable, were according to the value, minus these deductions.

As I have said, this act was applied to Ireland. This was done by the 27th Henry VIII., with this variation, that twentieths were substituted instead of tenths.

If the parochial tithe was subject to subtraction, of one-fourth for the poor, and one-fourth for the reparation of the church, would they not have been deducted from the value,

upon the amount of which the first fruits were payable. If it be argued, that the parish priest was obliged to give, beside the first fruits, one-fourth to the poor, and one-fourth to the church, he would be bound to pay this iniquitous tax, not for one year, but for two years. For, in the first year, he would be forced to yield one half of the value of his tithes to the poor and the church, which he never received, and, which, consequently would prevent him, in the following year, from devoting to his own use, a sum, equal to that which he was compelled, unjustly, to pay. Suppose a benefice, worth £400 a year, after the deductions already specified. In the first year, the Incumbent would have to pay this as first fruits to the king, and yet, to make good the one half of this sum, £200, to the poor and the church. So that, in the second year, he would have to repay himself the £200, paid the previous year to the poor and the church, and, also, to give the other moiety of his income to the same objects. So that, in fact, he would be two years without receiving any advantage from his benefice, and possibly three.

But, this supposition is too absurd. The de-

ductions evidently included every charge upon the tithe. The sum remaining was entirely his own. While "the alms by reason of any foundation or ordinance" entirely excluded the parochial tithe from the payment of any part of them, by limiting them to those consecrated to this purpose by "foundation or ordinance." If the parochial tithe were subject to them, would the mention of them have been omitted, when even the expense of bailiffs and proxies, are items in the catalogue of deductions from the profits of the benefice.

This liability of the monastic properties to hospitality and alms are enumerated in this statute, because before its enactment, they were subject to the payment of them. And the act, which subsequently invested the king with the propriety of them, while it entitled him to every privilege in as ample manner, as it had been enjoyed by the monks, also bound him to the fulfilment of the same duties to which they were subject, viz. the maintenance of the Vicar, the keeping of hospitality, and feeding of the poor. And when the king and afterwards Queen Elizabeth bestowed these various proper-

ties in England and Ireland, of which they had become possessed by the dissolution of the Religious Houses, the persons to whom they were given were equally bound to the obligations, to which the king and queen, and before them, the monks, had been subject.

The examination of one Irish statute will be sufficient to evince the truth of this reasoning. “ And it is further enacted that if any of the kings grauntees or lessees, or his or their able and sufficient assigns which have or hereafter shall have, in forme for terme of life or of years, any of the said Houses of Connall, Thustledermot, Loughswedy, Tristernaughe, Forner, Kenlys, Athirde, Saint Leonards, Dinske, *Tyn-tirne, Dunbroody, Enescortie, Enestyoke, Ardmacartie, Tertnekevagh, and Kilcoule, doe not continually dwell, inhabite, household, and hospitality, in such houses as before is rehearsed, during their interest therein, THAT THEN THEIR LEASES AND GRAUNTES THEREOF SHALL BEE VOYD AND OF NONE EFFECT.**

* These passages I particularly mark, because I reside in the county where these estates are situate, and though an income of more than £30,000 a year is derived from them,

To this class of persons and to this species of property does the office of charity belong. Whether their fulfilment of it, as well as their residence continually on their estates, particularly in Ireland, is experienced by the wretched tenantry that supply them with the means of luxury, their miserable hovels and famished offspring sufficiently can testify.

I shall now conclude this long discussion, with two quotations, sufficiently strong of themselves to refute the doctrine of any quadripartite division of tithe, having been ever observed as respects the poor. The first is, from Sir William Blackstone.—

“The poor of England, till the time of Henry VIII., subsisted entirely upon *private* benevolence and the charity of well-disposed Christians. For, though it appears by the Mirror, that by the common law, the poor were to be sustained by parsons, rectors of the Church, and the parishioners, so that *none of them die for default of sustenance*, and though by the statutes

none of the proprietors ever reside, keep hospitality or household. Query do they fulfil their engagements as well as the clergy of the Established Church ?

12 Ric. II. c. 7. and 19 Hen. VII. c. 12. the poor are directed to abide in the cities and towns, wherein they were born, yet, till the statute 27 Hen. VIII. c. 25., I find no compulsory method chalked out for this purpose, but the poor seem to have been left to such relief as the *humanity* of their neighbours would afford them. The monasteries were, in particular, their principal resource.”*

The other quotation is from Mr. Hallam’s Constitutional History of the Middle Ages. “A very ungrounded prejudice has long obtained currency, that the alms of the monasteries maintained the indigent throughout the kingdom, and that the system of parochial relief, so much the topic of complaint, was rendered necessary by the dissolution of these benevolent foundations. There can be no doubt that many of the impotent poor received support from their charity, but the blind eleemosynary spirit inculcated by the Roman Church is notoriously the cause, not the cure of beggary. The monastic foundations, scattered in different countries, but

* Commentaries, Vol. 1. Book 1. c. ix. p. 879.

by no means, at regular distances, could never answer the end of local and limited succour, meted out in just proportion to the demands of poverty: their gates might be, indeed, open to those who knocked at them for alms, and came in search of a stream that must always be too scanty for a thirsty multitude; nothing could have a stronger tendency to promote that vagabond mendicity, which encreasing and severe statutes were enacted to suppress; it was, and always must continue, a hard problem to discover the means of rescuing those, whom labour cannot maintain from the last extremities of helpless suffering. The regular clergy were, in all respects, ill-fitted for this great office of humanity; even while monasteries were yet standing, the scheme of a provision for the poor had been adopted by the legislature, by means of regular collections, and which, in the course of a long series of enactments, were almost insensibly converted into compulsory assessments. It is by no means probable that, however some, in particular districts, might have to lament the cessation of hospitality in the convents, the

poor were placed in a worse condition by their dissolution.”*

In neither of these extracts is there one word to intimate that the poor had, in the early times, to which both allude, any maintenance from the tithes of the parochial priest.

* Hallam's Constitutional History of England, Vol. 1. c. ii. p. 86. Quarto Edition.

N O T E S.

Note (A.) p. 2.

Cantuariensi Archiepiscopo, ut Ecclesiis Parochialibus juste Decimæ persolvantur. Pervenit ad audientiam nostram quod Multi in Diocesi tua Decimas suas integras vel duas partes ipsarum non illis Ecclesiis in quarum parochiis habitant, vel ubi prædia habent et a quibus Ecclesiastica percipiunt Sacramenta, persolvunt; sed eas aliis pro sua distribuunt voluntate. Cum igitur inconveniens esse videatur et a ratione dissimile, ut Ecclesiæ quæ spiritualia seminant, metere non debeant, a suis Parochianis temporalia et habere, fraternitati tuæ autoritate præsentium indulgemus, ut liceat tibi super hoc non obstante contradictione vel appellatione cujuslibet, seu consuetudine hactenus observata, quod canonicum fuerit ordinare, et facere quod statueris per censuram Ecclesiasticam firmiter observari. Datum Lateran, 11. Nonas Julii.—Innoc. 3. in Epist. Decret. Lib. 2, p. 452. Edit Coloniens.

Note (B.) p. 2.

Upon Delegation made by Pope Innocent the fourth in 49 Hen. 3. to the Priors of S. Trinity and S. Bartholomew in London and the Archdeacon of Westminster, for the deciding of a controversy 'twixt the Abbess and Nuns of Chartris by Ely, and Robert Passelaw, Archdeacon of Lewes, about some tithes of the possession of the Nunnery in Barrington, it appears that in Passelaw's libel, no other title is made, but that the land lies infra limites Parochiæ suæ de Barenton, unde petit dictam Abatissam compelli integre ad solutionem

dictarum Decimarum cum damnis et interesse, &c.—Selden. c. xi. p. 362, 363.

Note (C.) p. 3.

The offerings of devout Christians were received, and disposed of in maintenance of the clergy and relief of distressed Christians, by the ~~Œ~~Economi, the Deacons or other officers there-to appointed under the Bishop. Neither had those parochial Priests at first such a particular interest in the profits received in oblations as in later times. All that was received whatsoever in the bishoprick, was a common treasury to be so dispensed. One part was allowed to the maintenance of the Ministry, (out of which every parochial minister had his salary, according to the monthly pay spoken of before) another to the relief of the poor, sick, and strangers, a third to the reparation of Churches, and a fourth to the Bishop: so it appears by the ancient canons, *if we may at least herein conjecture of the use of the time*, by what they have ordained, And it is *like enough* to have been no otherwise, *so long as these parochial functions were so personal*, that they were not as now, so annexed to foundations and endowments, but rather *exercised as by messengers*, sent from the Bishops. All this in primitive times, and from the first establishing of Christianity, by a disposition of the Hierarchy, *till about 500 years from Christ, it seems, it continued*. But not long after such time, as laymen began to build and endow parish-oratories or churches in their lordships, and in them place or invest Chaplains, that might receive the offerings of such as repaired thither for holy service; that former kind, of making a common treasury in every diocese, was discontinued, and *the Chaplain or Incumbent received now the profits that rose out of Christian devotion*, to a particular use of his own Church, the canons nevertheless saving the fourth part to the Bishops.—Selden. p. 82, 83.

So that the existence of the name of *quarta pars* as found in Ireland, proves nothing as to the original allotment of the *property* of the Church into a fourfold division.

“It is further worthy of remark, that, during those ancient periods, when these (equal) threefold or fourfold divisions of the Church revenue are said to have generally prevailed, and the poor to have been supported by the clergy, we find very strong injunctions upon the laity, in addition to their other payments, to be charitable to the poor. The seventh chapter, for instance, of the “Council of Chalchuth,” is very urgent *upon all persons* to give to the Church *tenths of all things which they possess*, and to *live upon the nine parts and to give alms*. (Wilkins, vol. i. p. 150. A. D. 785.) Thus, again, in the “Canons of King Edgar,” the priests are exhorted so to distribute the alms of the people, that the people may be accustomed to almsgiving, (p. 228. A. D. 964.) In a similar manner, the “*Liber Legum Ecclesiasticarum*,” enjoins agriculturists, sailors, &c. after paying their tenths, to give alms likewise out of the nine parts. (p. 278. A. D. 1003.) So also the “Laws of Ethelred,” require the payment of the *cyrisceat* (certain church-dues) and tithes, and then in a following chapter the alms-money. (p. 295. A. D. 1018.) How all this is to be reconciled with the alleged fact, that in those days the poor were supported by the Church, is, at least, not self-evident.—Dr. Dealtry’s Charge, p. 51.

Note (D.) p. 4.

“*Responsiones S. Gregorii papæ ad quæsitæ per nuntios Augustini primi Cantuarensis Archiepiscopi pro nascente jam apud Anglo-Saxones ecclesia gubernanda.*

“*Interea vir Domini Augustinus venit Arelas, et ab archiepiscopo ejusdem civitatis Ætherio, juxta quod jussa sancti patris Gregorii acceperat, archiepiscopus genti Anglorum ordi-*

natus est. Reversusque Britanniam, misit continuo Romanum Laurentium presbyterum, et Petrum monachum, qui beato pontifici Gregorio, gentem Anglorum fidem Christi suscepisse, ac se episcopum factum esse, referrent. Simul et de eis, quæ necessaria videbantur, quæstionibus ejus consulta flagitans. Nec mora, congrua quæsitui responsa recepit, quæ etiam huic historiæ nostræ commodum duximus indere.

“ I. Interrogatio beati Augustini episcopi Cantuariorum ecclesiæ.

“ De episcopis, qualiter cum suis clericis conversentur, vel de his quæ fidelium oblationibus accedunt altario, quantæ debeant fieri portiones, et qualiter episcopus agere in ecclesia debeat ?

“ Respondit Gregorius papa urbis Romæ :

“ Sacra Scriptura testatur (quam te bene nosse dubium non est) et specialiter beati Pauli ad Timotheum epistolæ, in quibus eum erudire studuit, qualiter in domo Dei conversari debuisset. Mos autem sedis apostolicæ est, ordinatis episcopis præcepta tradere, ut in omni stipendio quod accedit, quatuor debeant fieri portiones : una videlicet episcopo et familiæ, propter hospitalitatem atque susceptionem, alia clero, tertia pauperibus, quarta ecclesiis reparandis. Sed quia tua fraternitas monasterii regulis erudita, seorsum fieri non debet a clericis suis in ecclesia Anglorum, quæ, auctore Deo, nuper adhuc ad fidem adducta est, hanc debet conversationem instituere, quæ initio nascentis ecclesiæ fuit patribus nostris, in quibus ‘nullus eorum, ex his quæ possidebat, aliquid suum esse dicebat, sed erant eis omnia communia.’

“ II. Secunda interrogatio Augustini. Opto etiam doceri, an clerici continere non valentes, possint contrahere. Et si contraxerint, an debeant ad seculum redire.

“ Responsio beati Gregor.

“ Si qui vero sunt clerici extra sacros ordines constituti, qui

se continere non possunt, sortiri uxores debent, et stipendia sua exterius accipere. Quia et de iisdem patribus, de quibus præfati sumus, novimus scriptum, quod, ‘dividebatur singulis, prout cuique opus erat:’ de eorum quoque stipendio cogitandum atque providendum est, et sub ecclesiastica regula sunt tenendi, ut bonis moribus vivant, et canendis psalmis invigilent, et ab omnibus illicitis et cor, et linguam, et corpus, Deo auctore, conservent: *communi autem vita viventibus, jam de faciendis portionibus, vel exhibenda hospitalitate, et adimplenda misericordia, nobis quid erit loquendum?* cum omne quod superest in causis piis ac religiosis erogandum est, Domino omnium magistro docente, ‘quod superest, date eleemosynam, et ecce omnia munda sunt vobis.’”—Ex Beda hist. Ecclesiast. lib. I. cap. 27.—Wilkins, Concilia, vol. i. p. 18.

Note (E.) p. 7.

The canonists and others in provincial synods have in the *latter ages* compiling their decrees, made to serve *as if they had expressly named tithes*, as you may see in that example remembered before out of Juo and Burchard; in that of the Council of Gangra in C. 16, q. 1, c. 57, in Canonibus; in that of the 29 chapter of *Gelasius* his decree in the Council of Tribur held 890, cap. 13, in that of the first Oecumenical Council of Chalcedon, cap. 17, in c. 14, of the same synod of Tribur; and in that of the ninth Council of Toledo, in an old Council of Cologne. He that reads those old canons only, as they are so applied, in late authority, to tithes, might perhaps soon think that at first they were made specially and by name for them. The matter is plainly otherwise. What was ordained in them about oblations, is out of them in later times (tithes and oblations being then supposed of equal right) expressly extended also to tithes, the word oblations, as you see in those times, being usual for tithes also when they were given.—Selden, p. 63.

Of the genuineness of Excerptiones Egberti, Selden says : Egbert lived Archbishop of York from the year 743 to 767. But the authority of that title must undergo censure. Whoever made it supposed that Egbert gathered the law and the rest joined with it out of some former church constitutions, neither doth the name excerptiones denote otherwise. But in that collection some whole constitutions occur in the same syllables as they are in the capitularies of Charles the Great, as that of unicuique Ecclesiæ unus mansque integer, &c., and some others which could *not be known to Egbert* that died in the last year of Pepin, father to Charles. How came he then by that ? and how may we believe that Egbert was the author of any part of those Exceptions ? unless you excuse it with that use of the middle times, which often inserted into one body and under one name laws of different ages. But admit that : yet, what is secundum Canonicam auctoritatem coram testibus dividant ? The ancientest Canonica auctoritas, for dividing tithes before witnesses, is an old imperial, attributed in some editions to the eleventh year of the reign of Charles the Great, being King of France, in others to the Emperor Lothar the First. But refer it to either of them, and it will be divers years later than Egbert's death. And other mixt passages there plainly show, that whose soever the collection was, much of it was taken out of the Imperial Capitularies, none of which were made in Egbert's time.—p. 197.

Of the synod held under Kenulph, King of West Saxony, Selden says : In the relation of the Legates to the Pope, mention is of Kenulph King of West Saxony, his joining with Offa in calling the Council. But the confirmations of the decrees have no reference to him. But, by the way, if you examine it by story and synchronisme, Kenulph perhaps could not have at all to do with it. For some of our old monks expressly affirm, that in the second year of Brithric, next suc-

cessor after Kenulph's death, Pope Adrian sent his Legates in Britanniam ad renovandam fidem quam prædicaverat Augustinus. And that they then held their synod at a place called Cealchithe. How could Kenulph be there then, as the Legates relate? *Believe the monks as you will.* But indeed, an exactness here is not easy extracted out of the disturbed times of our Chronicles. p. 202.

Of the laws of Edward the Confessor he says: But however those laws are attributed to the Confessor; it is certain that as the ordinary copies of them are, and as they speak in the published volume of Saxon laws, they are not without many mixtures of somewhat later transcribers.—p. 225.

Note (F.) p. 27.

Dr. Doyle relies much on the council of Mascon. What says Mr. Selden? He thus introduces his description of it. "Some canons, both Pontifical and Synodal, made for the right and payment of tithes, are attributed to the ages that fell about the middle of this, that is, the sixth century. But I have not observed above one, as referred hither; *neither was that ever received into the body, or any old code of the canons.* That one is *Provincial*, and made in the year 586, in the council of Mascon." p. 57.

But, however, that before-cited canon of Mascon, had its provincial authority, no canon, as yet, (for 800 years) was received in the church, generally, for a binding law, for payment of any certain quantity, which not only appears, in that we find no such now remaining, but also, is confirmed by the testimony of a great and learned Bishop, (in whose province also Mascon was) that could not be ignorant of the law received in his time." This Bishop wrote in the ninth cen-

ture. “ And in a treatise, about the dispensation of church revenues, expressly denies, that before his time, any synod or general doctrine of the church, had determined or ordained anything touching the quantity that should be given, either for maintenance, or building of churches. Because his words are special authority, also, against those counterfeit titles of canons before spoken of, they shall have place here—“ Jamvero de donandis rebus et ordinandis ecclesiis, nihil unquam in Synodis constitutum est, nihil a sanctis patribus publice prædicatum. Nulla enim compulit necessitas fervente ubique religiosa devotione et amore illustrandi ecclesias ultro astuante.” This author is Agobard, Bishop of Lions, very learned and of great judgment, and had not so confidently denied what you see he doth, if any decree, canon, or council, generally received, had, before his time, commanded the payment or offering of any certain part. How the authority of that council of Mascon stands with this meaning, I well conceive not. But clearly, he speaks truth in regard of what was generally received. For neither in the codex ecclesiæ universalis, or the codex ecclesiæ Romanæ, or Africane, Fulgentius, Fernandus, Cresconius or Isidores collection, (all of which in those elder ages, were as parts of the body of the canon law) is once any mention of the *name of tenths*.” p. 65.

Note (G.) p. 62.

De reparationibus Ecclesiarum, et clausuris cœmeteriorum.

Licet parochiani ecclesiarum parochialium suarum naves, et rectum ecclesiarum interius, et exterius, ipsarumque campanile, altaria, et imagines, vitreasque fenestras, in dictis navibus existentes, et cœmeterium clausuras, de consuetudine laudabili in nostra provincia diutius obtenta facere, ac, quoties fuerit necesse, reparari suis sumptibus teneantur: tamen religiosi et alii, possessiones, aut prædia, seu redditus, infra fines et li-

mites ecclesiarum hujusmodi nostræ provinciæ Cantuariensis obtinentes, possimè degentes extra parochiam ecclesiarum ipsarum, fabricæ earundem, aut coemeteriorum clausuris, et cæteris incumbendis oneribus, à parochianis supportandis de consuetudine vel de jure, cum eis contribuere, quamvis, ut plurimum, onera hujusmodi, secundum prædiorum ac possessionum quantitatem in parochiis existentium limitentur, et taxentur, recusant injustè. Sed religiosi in locis variis nostræ provinciæ possessiones, et prædia diversa in parochiis hujusmodi ecclesiarum, per acquisitiones novas, necnon et alii extra parochiam degentes occupant et obtinent his diebus, adeò ut eorum reliqui parochiani in ipsarum ecclesiarum parochiis degentes, onera, aut refectionem, seu reparationem præmissorum, eisdem incumbencia per se nequeant asportare, unde domorum Dei publicus deformatur aspectus, et earum ex his dehonestatibus sequuntur alia etiam incommoda manifesta. Nos igitur, præsentis approbatione concilii, duximus statuendum, quòd tam religiosi quàm alii, possessiones, aut prædia, seu redditus, quæ de gleba reficiendarum ecclesiarum, seu dote non extant, in quibuscunque parochiis nostræ provinciæ obtinentes, seu in posterum habituri, in ipsis degentes, vel alibi, ad quævis onera parochianis prædictis in his incumbencia, de consuetudine vel de jure, quæ consideratis possessionum, et reddituum quantitibus imminet, vel imponentur eisdem, cum cæteris parochianis ecclesiarum hujusmodi, quoties opus fuerit, censuris ecclesiasticis per locorum ordinarios compellantur.—Consti. Provin. p. 50. Edit. Oxon. 1679.

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